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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 173.

EAST TENNESSEE, VIRGINIA AND GEORGIA RAILWAY COMPANY, THE NORFOLK AND WESTERN RAILROAD COMPANY, ET AL., APPELLANTS,

vs.

THE INTERSTATE COMMERCE COMMISSION.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

FILED JANUARY 9, 1911.

(17,995.)

(17,595.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 481.

THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILWAY COMPANY, THE NORFOLK AND WESTERN RAILROAD COMPANY, ET AL., APPELLANTS,

vs.

THE INTERSTATE COMMERCE COMMISSION.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

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1 *Transcript of Record.*

Be it remembered, that at a circuit court of the United States, begun and held for the southern division of the eastern district of Tennessee, at the Federal building in the city of Chattanooga, within said district and the sixth circuit, on the first Monday, it being the 4th day of October, A. D. 1897.

Court met pursuant to adjournment—present and presiding, the Honorable Chas. D. Clark, district judge for the eastern and middle district of Tennessee—among the proceedings had were the following, to wit:

THE INTERSTATE COMMERCE COMMISSION
vs.
THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILway Company, The Norfolk and Western Railroad Company, The Old Dominion Steamship Company, The Western and Atlantic Railroad Company, The Central Railroad and Banking Company of Georgia, The Central Railroad Company, The Georgia Railroad Company, The Ocean Steamship Company of Savannah, The South Carolina Railway Company, The Clyde Steamship Company, The Cincinnati, New Orleans and Texas Pacific Railway Company, The Baltimore and Ohio Railroad Company, The Central Railroad Company of New Jersey, The Nashville, Chattanooga and St. Louis Railway Company, The Pennsylvania Railroad Company, The Pennsylvania Company, The New York, Lake Erie and Western
2 Railroad Company, The New York and New England Railroad Company, The Delaware and Hudson Canal Company. } No. 384.

Be it remembered that heretofore, to wit: on the 24th day of March, A. D. 1893, came the petitioner and filed in the clerk's office of said court, a certain petition, which said petition is clothed in the words and figures following, to wit:

Petition of the Interstate Commerce Commission.

(Endorsed:) Filed 1893, Mar. 24. Henry O. Ewing, deputy clerk.

In the Circuit Court of the United States for the Eastern District of Tennessee. In Equity.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILway Company, The Norfolk and Western Railroad Company, The Old Dominion Steamship Company, The Western and Atlantic Railroad Company, The Central Railroad and Banking Company of Georgia, The Georgia Railroad Company, The Ocean Steamship Company of Savannah, The South Carolina Railway Company, The Clyde Steamship Company, The Cincinnati, New Orleans and Texas Pacific Railway Company, The Baltimore and Ohio Railroad Company, The Central Railroad Company of New Jersey, The Nashville, Chattanooga and St. Louis Railway Company, The Pennsylvania Railroad Company, The Pennsylvania Company, The New York, Lake Erie and Western Railroad Company, The New York and New England Railroad Company, The Delaware and Hudson Canal Company. } No. —.

3 To the circuit court of the United States, sitting in equity, within and for the eastern district of Tennessee, at Chattanooga:

Your petitioner, The Interstate Commerce Commission, which was created and established and now exists under and by virtue of an act of the Congress of the United States entitled "An act to regulate commerce," approved February 4, 1887, as amended by an act approved March 2, 1889, and as amended by an act approved February 10, 1891, and an act approved February 11, 1893, humbly complaining, showeth unto your honors that the East Tennessee, Virginia and Georgia Railway Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Tennessee, and having its principal office at Knoxville, in said State; that the Norfolk and Western Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the States of Virginia and West Virginia, and having its principal offices at Roanoke, Va.; that the Old Dominion Steamship Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of ——, and having its principal office at ——, in the State of ——; that the Western and Atlantic Railroad Company is a corporation created, chartered, existing under and by virtue of the laws of the State of Georgia, and having its principal office at Atlanta, in the State of Georgia; that the

Central Railroad and Banking Company of Georgia is a corporation created, chartered, and existing under and by virtue of the laws of the State of Georgia, and having its principal office at Atlanta, in the State of Georgia; that the Georgia Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Georgia, and having its principal office at Augusta, in said State; that the Ocean Steamship Company of Savannah is a corporation created, chartered, and existing under and by virtue of the laws of the State of Georgia, and having its principal office at Savannah, in said State; that the South Carolina Railway Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of South Carolina, and having its principal office at Charleston, in said State; that the Clyde Steamship Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of South
4 Carolina, and having its principal office at Charleston, in the State of South Carolina; that the Cincinnati, New Orleans and Texas Pacific Railway Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Ohio, and having its principal office at Cincinnati, in said State; that the Baltimore and Ohio Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Maryland, and having its principal office at Baltimore, in said State; that the Central Railroad Company of New Jersey is a corporation created, chartered, and existing under and by virtue of the laws of the State of New Jersey, and having its principal office at New York, in the State of New York; that the Nashville, Chattanooga and St. Louis Railway Company is a corporation, created, chartered, and existing under and by virtue of the laws of the States of Tennessee, Alabama, Georgia, and Kentucky, and having its principal office at Nashville, in the State of Tennessee; that the Pennsylvania Railroad Company is a corporation, created, chartered, and existing under and by virtue of the laws of the State of Pennsylvania, and having its principal office at Philadelphia, in said State; that the Pennsylvania Company is a corporation, created, chartered, and existing under and by virtue of the laws of the State of Pennsylvania, and having its principal office at Pittsburg, in said State; that the New York, Lake Erie and Western Railroad Company is a corporation, created, chartered, and existing under and by virtue of the laws of the State of New York, and having its principal office at New York, in said State; that the New York and New England Railroad Company is a corporation, created, chartered, and existing under and by virtue of the laws of the States of Massachusetts, Connecticut, Rhode Island, and New York, and having its principal office at Boston, in the State of Massachusetts; that the Delaware and Hudson Canal Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of New York, and having its principal office at New York, in said State.

That the said defendants at the time of the committing of the grievances hereinafter specially mentioned were and still are common carriers engaged in the transportation of persons and property partly

by railroad and partly by water, under a common control, management, or arrangement for a continuous carriage or shipment by their railroads and lines of steamboats extending through several of the United States, and particularly were they then engaged in such business between seaboard points in the States of Massachusetts, New York, Pennsylvania, and Maryland to points in the State of Tennessee, and as such common carriers were during all the time aforesaid and still are subject to the said act entitled "An act to regulate commerce," and the amendments thereto.

That the said defendants were heretofore, to wit, on th- 9th day of April, 1890, duly impleaded in a controversy not requiring a trial by jury, as provided by the seventh amendment to the Constitution of the United States, before the said Interstate Commerce Commission, upon the petition of the board of trade of Chattanooga, then being a mercantile society, duly incorporated under the laws of the State of Tennessee, and having its principal office at Chattanooga, in that State, for the alleged violation on the part of said defendants of the provisions of said act, as at large and more fully appears in and by the said petition on file in the office of the said commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit A; that a copy of said petition, duly attested by the secretary of the said Interstate Commerce Commission, under the seal of said commission, was duly forwarded by the said Interstate Commerce Co[illegible]mission to each of the defendants aforesaid, as required by the th[illegible]th section of the said act.

That thereafterwards, on the 5th day of May, 1890, the sa.. Georgia Railroad Company filed its answer to the above-named petition, as at large and more fully appears in and by said answer on file in the office of the said commission, a copy whereof is hereunto annexed as a part of this petition, the same being marked Exhibit B.

That thereafterwards, to wit, on the 8th day of May, 1890, the East Tennessee, Virginia and Georgia Railway Company and the Norfolk and Western Railroad Company filed their joint answer to the above-named petition, as at large and more fully appears in and by said answer on file in the office of the said commission, a copy whereof is hereunto annexed as a part of this petition, the same being marked Exhibit C.

That thereafterwards, to wit, on the 9th day of May, 1890, the Baltimore and Ohio Railroad Company filed its answer to the above-named petition, as at large and more fully appears in and by said answer on file in the office of the said commission, a copy whereof is hereunto annexed as a part of this petition, the same being marked Exhibit D.

That thereafterwards, to wit, on the 15th day of May, 1890,
6 the Central Railroad and Banking Company of Georgia and the Ocean Steamship Company of Savannah filed their joint answer to the above-named petition, as at large and more fully appears in and by said answer on file in the office of the said commis-

sion, a copy whereof is hereunto annexed as a part of this petition, the same being marked Exhibit E.

That thereafterwards, on the 19th day of May, 1890, the Norfolk and Western Railroad Company filed a further and separate answer to the above-named petition, as at large and more fully appears in and by said answer on file in the office of the said commission, a copy whereof is hereunto annexed as a part of this petition, the same being marked Exhibit F.

That thereafterwards, on the 19th day of May, 1890, the Western and Atlantic Railroad Company filed its answer to the above-named petition, as at large and more fully appears in and by said answer on file in the office of the said commission, a copy whereof is hereunto annexed as a part of this petition, the same being marked Exhibit G.

That thereafterwards, on the 20th day of May, 1880, the Delaware and Hudson Canal Company filed its answer to the above-named petition, as at large and more fully appears in and by said answer on file in the office of the said commission, a copy whereof is hereunto annexed as a part of this petition, the same being marked Exhibit H.

That thereafterwards, on the 20th day of May, 1890, the Pennsylvania Railroad Company filed its answer to the above-named petition, as at large and more fully appears in and by said answer on file in the office of the said commission, a copy whereof is hereunto annexed as a part of this petition, the same being marked Exhibit I.

That thereafterwards, on the 23d day of May, 1890, the Nashville, Chattanooga and St. Louis Railway Company filed its answer to the above-named petition, as at large and more fully appears in and by said answer on file in the office of the said commission, a copy whereof is hereunto annexed as a part of this petition, the same being marked Exhibit K.

That thereafterwards, on the 27th day of May, 1890, the New York, Lake Erie and Western Railroad Company filed its answer to the above-named petition, as at large and more fully appears in and by said answer on file in the office of the said commission, a copy whereof is hereunto annexed as a part of this petition, the same being marked Exhibit L.

7 That thereafterwards, on the 9th day of June, 1890, the Cincinnati, New Orleans and Texas Pacific Railway Company filed its answer to the above-named petition, as at large and more fully appears in and by said answer on file in the office of the said commission, a copy whereof is hereunto annexed as a part of this petition, the same being marked Exhibit M.

That thereafterwards, on the 11th day of June, 1890, the New York and New England Railroad Company filed its answer to the above-named petition, as at large and more fully appears in and by said answer on file in the office of the said commission, a copy whereof is hereunto annexed as a part of this petition, the same being marked Exhibit N.

That thereafterwards, on the 12th day of June, 1890, D. H. Cham-

berlain, receiver of the South Carolina Railway Company, filed his answer to the above-named petition, as at large and more fully appears in and by said answer on file in the office of the said commission, a copy whereof is hereunto annexed as a part of this petition, the same being marked Exhibit O.

That thereafterwards, on the 20th day of June, 1890, the Central Railroad Company of New Jersey filed its answer to the above-named petition, as at large and more fully appears in and by said answer on file in the office of the said commission, a copy whereof is hereunto annexed as a part of this petition, the same being marked Exhibit P.

That thereafterwards, the said cause being at issue upon the pleadings aforesaid duly came on for investigation and hearing before the said Interstate Commerce Commission, duly and legally assembled for that purpose, on the 12th day of November, 1890, at Chattanooga aforesaid, and days subsequent thereto, when said complainant duly appeared as well as the following-named defendants: The East Tennessee, Virginia and Georgia Railway Company; The Norfolk & Western Railroad Company; The Old Dominion Steamship Company; The Western and Atlantic Railroad Company; The Central Railroad and Banking Company of Georgia; The Ocean Steamship Company of Savannah; The Cincinnati, New Orleans and Texas Pacific Railway Company; The Nashville, Chattanooga and St. Louis Railway Company; all of the other defendants having theretofore been duly and seasonably notified that the hearing in said cause would be had at Chattanooga aforesaid, on that date, and thereupon the said cause proceeded to hearing and determination.

That at the said hearing it was made to appear to the satisfaction of the said commission that the said defendants had violated
8 the provisions of the said act in certain respects as was said to have been violated by them in the said petition hereinbefore referred to, marked Exhibit A, and thereupon, on the 30th day of December, 1892, the said commission duly and legally determined the matters and things in controversy and at issue between the said parties, and made a report in writing in respect thereof, which included the findings of fact upon which the conclusions of the said commission were based, as at large and more fully appears in and by the report of the determination of the said commission, on file in the office of the said commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit Q.

That thereafterwards, to wit, on the 30th day of December, A. D. 1892, upon the determination of the said cause as aforesaid, the said commission duly formulated an order and notice in relation to the matters and things stated and charged in the said petition, based upon the findings and determination of the said commission with respect thereto, agreeably to the requirements of the statute in such case made and provided, which said order now remains in full force and effect, never having been vacated, set aside, altered, modified, or changed in any respect whatever, and is now on file in the office of

the said commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit R.

That thereafterwards, to wit, on the 13th day of January, 1893, the said commission, agreeably to the provisions of the law in that regard, duly caused a properly authenticated copy of its said report in respect thereto as aforesaid, together with the order and notice aforesaid, to be delivered to the said defendants.

And thereupon the petitioner shows that it has not been made to appear to the said commission that the said defendants have ceased and desisted from the violations of law set forth in the said report and order of the said commission, but, on the contrary thereof, the said defendants, unmindful of their duty and of the decision and determination of the said commission, as stated in its report as aforesaid, have, through their officers, servants, and attorneys, wholly disregarded and set at naught the authority and order of the said commission in that regard, and have wilfully and knowingly violated and disobeyed the said order, and have from the time of the issuance and service of the said order and notice as hereinbefore set forth, hitherto wholly neglected and refused,
9 and still do neglect and refuse, to comply with the same, to wit, at Chattanooga aforesaid, in this that the said defendants not having prior to the 1st day of February, 1893, made application to the said commission for relief under the proviso clause of the fourth section of the act to regulate commerce, have not since the 1st day of Feb'y, 1893, ceased and desisted from making, enforcing, or receiving any higher rates for the transportation of property from Boston, in the State of Massachusetts; New York, in the State of New York; Philadelphia, in the State of Pennsylvania; Baltimore, in the State of Maryland; and other eastern seaboard points to Chattanooga aforesaid, than have been made and accepted by them at the same time for like transportation to Nashville, in the State of Tennessee.

Wherefore the petitioner prays—

1. That a subpœna or other suitable process may issue according to the course of equity, requiring the said The East Tennessee, Virginia and Georgia Railway Company, The Norfolk and Western Railroad Company, The Old Dominion Steamship Company, The Western and Atlantic Railroad Company, The Central Railroad and Banking Company of Georgia, The Georgia Railroad Company, The Ocean Steamship Company of Savannah, The South Carolina Railway Company, The Clyde Steamship Company, The Cincinnati, New Orleans and Texas Pacific Railway Company, The Baltimore and Ohio Railroad Company, The Central Railroad Company of New Jersey, The Nashville, Chattanooga and St. Louis Railway Company, The Pennsylvania Railroad Company, The Pennsylvania Company, The New York, Lake Erie and Western Railroad Company, The New York and New England Railroad Company, and The Delaware and Hudson Canal Company to appear at such time and place as this honorable court may determine, then and there to make full, complete and perfect answer to all the matters and things hereinabove stated and charged, as fully and particularly as

if the said companies were specifically and specially interrogated in regard thereto without verifying said answers by oath, which said verified answers are hereby specially waived.

2. That upon the filing of this petition an order may be passed by this honorable court directing the method of service of notice of the pendency of this proceeding.

3. That such order or orders may be passed pending the cause as will secure a speedy hearing and determination of the matters and things stated and charged in the foregoing petition.

10 4. That such order or orders may be passed pending the cause as may be necessary for the prosecution of all such inquiries as the court may think needful and lawful to enable it to form a just judgment of the matters and things stated and charged in the foregoing petition.

5. That an order may be entered pending the cause granting to the petitioner a writ of injunction or other proper process, mandatory or otherwise, to restrain the said defendants, their officers, servants and attorneys, from further continuing in their violations of and disobedience to the said order of the said commission, and that upon final hearing such injunction may be made perpetual.

6. That a decree may be entered, if it shall seem meet to this honorable court, requiring the said defendants to pay a sum of money, not exceeding the sum of $500, for every day after a day to be named in said decree that it shall fail to obey the said injunction or other proper process.

7. For such other and further relief in the premises as to the court may seem meet and the equities of the petitioner's cause may require.

[L. S.] THE INTERSTATE COMMERCE COMMISSION,
By EDW. A. MOSELEY,
The Secretary Thereof, Thereunto Duly Authorized.

This is the first application for the writ of injunction in this cause.

H. M. Wiltse, ass't U. S. att'y for the eastern district of Tennessee, being duly sworn, deposes and says that the statements made in the foregoing petition are true to the best of his knowledge, information and belief.

H. M. WILTSE.

Subscribed and sworn to before me this 24 day of Mar., 1893.

HENRY O. EWING,
Deputy Clerk.

11 EXHIBIT A.

The Interstate Commerce Commission.

THE BOARD OF TRADE OF CHATTANOOGA
vs.
THE EAST TENNESSEE, VIRGINIA & GEORGIA RAILWAY, THE Norfolk and Western Railroad, The Old Dominion Steamship Company, The Western and Atlantic Railway Company, The Central R. R. & Banking Company of Georgia, The Georgia Railroad, The Ocean Steamship Company of Savannah, The South Carolina Railway, The Clyde Steamship Company, The Cin., New Orleans & Texas Pacific Railway, The Baltimore & Ohio Railroad Company, The Central Railroad of New Jersey, The Nashville, Chattanooga & St. Louis Railway, The Pennsylvania Railroad Company, The Pennsylvania Company, The New York, Lake Erie & Western Railroad, The New York & New England Railroad, The Delaware & Hudson Canal Company.

The petition of the Board of Trade of Chattanooga respectfully shows:

I. That the said board of trade is an association of the merchants and manufacturers of the city of Chattanooga, in the State of Tennessee, and is chartered under the laws of said State; that it has a president and secretary and a board of directors; that its objects, among others, are "to study the workings of our system of transportation, upon which our commercial prosperity depends so largely, and endeavor to remedy, by all proper means, the defects and abuses existing therein."

II. That the defendants above enumerated are common carriers engaged in the transportation of passengers and property by railroad and water from seaboard points in the State of Massachusetts, New York, Pennsylvania, and Maryland to points in the State of Tennessee, and as such common carriers are subject to the act to regulate commerce.

12 III. That the defendants separately and jointly have been and are now transporting property and participating in through rates of freight charges for transporting the same, from the following points, which are designated as eastern seaboard points: Boston, in the State of Massachusetts; New York in the State of New York; Philadelphia, in the State of Pennsylvania; Baltimore, in the State of Maryland; to the following points in the State of Tennessee: Nashville, Memphis, and Chattanooga, cities that compete for business in the same territory. That the defendants are transporting said property and participating in through rates for the transporting of the same, that are much lower to Nashville and Memphis than the said defendants charge and collect for transporting like property from the aforesaid seaboard points under the same, or substantially the same, circumstances and conditions to the city of Chattanooga.

IV. That the said defendants, being common carriers, transport property shipped at eastern seaboard points to the points in the State of Tennessee enumerated in paragraph 3, and transport it through the city of Chattanooga to the cities of Nashville and Memphis, which cities are respectively 151 miles and 310 miles beyond Chattanooga, and therefore that many miles farther from the said eastern seaboard points.

V. That said defendants refuse to transport said like property, as aforesaid, to the city of Chattanooga at the same rates as they transport like property from said eastern seaboard points to the city of Memphis, which is 310 miles longer haul, or at the rates at which they transport like property from said eastern seaboard points to Nashville, which is a 151-mile longer haul than the haul to Chattanooga; although they transport the property, as aforesaid, through the city of Chattanooga. And this in violation of section four of the act to regulate commerce.

VI. That the rates charged to Chattanooga are too high, both in comparison with the rates given Nashville and Memphis and in themselves. That they should be reduced because of Chattanooga's position as regards nearness to the said eastern seaboard points; and because of its railway facilities; and because of its water communications, which will be complete the coming summer.

VII. That the transportation of property from eastern seaboard points at lower rates to Nashville and Memphis than to Chattanooga, by the defendants, is not only a violation of section 4 of the
13 act to regulate commerce, but the rates so charged and collected are in violation of section 2. They unjustly discriminate against the merchants of Chattanooga and in favor of the merchants of Nashville and Memphis. They are also in violation of section 3, which forbids unreasonable preference to be given to any locality. In the instances complained of the preference given Nashville and Memphis amount-, in many particulars, to a reasonable profit to the favored merchants and manufacturers.

VIII. That the rates as aforesaid are also violations of section 1, and are admitted to be violations by the defendants when they persistently solicit in eastern seaboard points the property for transportation to Nashville and Memphis at much lower rates than they charge for transporting like property from said points to the city of Chattanooga. If the rates to Nashville and Memphis afford sufficient compensation to warrant said defendants in incurring large expense in soliciting said property for Nashville and Memphis, then said defendants would receive sufficient compensation in the same rates for transporting like property to Chattanooga.

IX. That the technical claim of the defendants that the rates to Nashville and to Memphis are not made through Chattanooga does not avail to warrant the violation of section 4 of the act to regulate commerce, because the defendants are not forced, nor compelled, to transport such property at the rates made to those points. The defendants are separate corporations, and are merely united in the through-freight lines, with through rates of freight charges. And, further, that the rates to either Nashville or Memphis would be

ample compensation to said freight lines for the transportation of property from eastern seaboard points to the city of Chattanooga.

X. That the existence of water transportation for a portion of the way to Nashville, and for a portion or for the whole of the way to Memphis does not warrant, force or compel the defendants to transport property from eastern seaboard points to Nashville and Memphis at lower rates of freight than said defendants can, and may, transport like property to Chattanooga. That the water may tend to keep the rates down to reasonable levels your petitioners admit, but the defendants do not use the water rates, but such rates as give them ample compensation.

XI. That the opening of the Muscle Shoals canal, which the United States Army engineer in charge, Col. J. W. Barlow, assures us will occur in the early part of the coming summer, will
14 give Chattanooga water transportation from Cincinnati, such as Nashville now enjoys, and will, and should, under all previous rulings, cause like reductions as were made to other points because of water transportation to be made in the rates to Chattanooga. That if the rates which must follow the opening of the canal shall be fair, just, and equitable the same rates would be fair, just, and equitable today, because there will be no lessening of the expenses of the said defendants in the transportation of said property from eastern seaboard points by the opening of said canal. Said defendants therefore charge the present unreasonable rates to Chattanooga just because they can, and not because such rates are fair, just, or absolutely necessary. The maintaining of such rates is arbitrary, and from such arbitrariness your petitioners humbly pray for relief.

XII. Your petitioners respectfully refer to the tariffs on file in the office of the interstate commission for proof of the foregoing allegations. And they ask permission to illustrate said tariffs, as follows:

Rates from New York and Boston—

	Classes—					
	1	2	3	4	5	6
To Chattanooga.....	114	98	86	73	60	49
To Memphis, 310 miles farther.....	100	85	65	45	38	35
To Nashville, 151 miles farther.....	91	78	60	42	36	31

These figures illustrate the arbitrariness of the rate-making and the violations of section 4 of the act to regulate commerce.

Your petitioners would further ask permission to illustrate the discriminations of the rates now in force:

Rates from Boston and New York are less—

	1	2	3	4	5	6
To Nashville than to Chattanooga by...	23	20	26	31	24	18
To Memphis than to Chattanooga by....	14	13	21	28	22	14

An examination of these figures will convince the honorable commission that the rates complained of are made by no certain rules, and are oppressively arbitrary.

Your petitioners would further ask permission to give the rates in force to the city of Cincinnati, a basing point on the Ohio river, where the water transportation to Nashville begins:

15 The rates from Boston and New York—

	1	2	3	4	5	6
To Cincinnati.....	65	57	44	30	26	22

From Cincinnati—

	1	2	3	4	5	6
To Chattanooga, 335 miles	49	41	42	43	34	27
To Nashville, 296 miles.....	26	21	16	12	10	9

These figures are the difference between the rates to Cincinnati from the East and the rates to Chattanooga and Nashville from the East. The difference in the mileage from Cincinnati to Nashville and to Chattanooga is only 39 miles in favor of Nashville, while the charges for the haul of the 39 miles extra costs the merchants of Chattanooga fully double on the average of all the classes what the haul of 296 miles costs the merchants of Nashville. No doubt the defendants prorate these differences over the entire lines from eastern points to Chattanooga, still the fact remains.

XIII. Your petitioners respectfully ask that the honorable commission inquire into these arbitrary discriminations, and that opportunity be given your petitioners to make good any and all allegations herein made, and be permitted to amend this complaint, if through ignorance any material point or claim is omitted, so that the honorable commission may be able to make such order as will be just, fair, and equitable, both to your petitioners and to the defendants.

Wherefore the petitioners pray that the defendants may be required to answer the charges herein, and that after due notice and hearing and investigation an order be made commanding the defendants to cease and desist from said violations of the act to regulate commerce; and that said order require them to transport property to Chattanooga from eastern seaboard points at such rates as the honorable commission may decide to be just and equitable; and further, that said order command them to cease transporting property from eastern seaboard points to the cities of Nashville and Memphis at lower rates of freight charges than the said defendants charge and collect for transporting like property to the city of Chattanooga, and for such other and further order as the commission may deem necessary to grant relief to the merchants and manufacturers of Chattanooga.

16 In the name of and by direction of the board of trade in special session called for this business on the 14th day of March, 1890.

JOSEPH F. SHIPP, *President.*

G. C. CONNOR, *Secretary.*

STATE OF TENNESSEE, }
Hamilton County. }

Personally appeared before me, J. P. Hoskins, a notary public in and for said county, Joseph F. Shipp, president of the Chattanooga Board of Trade, who, being duly sworn, says that the said board is the complainant in this proceeding, and that the said matters set forth in the foregoing petition are true, as he verily believes.

J. P. HOSKINS,
Notary Public.

Subscribed and sworn to before me this 3d day of April, 1890.

[SEAL.] J. P. HOSKINS,
Notary Public.

EXHIBIT B.

PETITION OF THE BOARD OF TRADE OF CHATTANOOGA }
vs.
THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILWAY and Others. }

Answer of the Georgia Railroad Company to the Above-stated Petition.

It is true that the rate from Boston and New York to Memphis and Nashville is less than to Chattanooga.

The existence of water transportation for a portion or for the whole of the way to Memphis and Nashville secures to those cities advantages not enjoyed by Chattanooga.

The Georgia railroad is but a link in the line from Boston and New York via Charleston, South Carolina, to Chattanooga, Memphis, and Nashville, and in participating in the transportation of freight from the eastern cities named to Memphis and Nashville at lower rates than to Chattanooga, the service is not performed under substantially similar circumstances and conditions, and consequently the rates are not violative of sections two, three, and four of the interstate-commerce act.

17 STATE OF GEORGIA, }
Richmond County. }

Before me, Wm. Lyon Martin, a notary public in and for said county, personally appeared John W. Green, who, on oath, says that he is the general manager of the Georgia railroad, and that the foregoing answer, so far as it is made of his own knowledge, is true, and so far as it is made on information and belief, he believes it to be true.

JNO. W. GREEN.

Subscribed and sworn to before me this 2nd day of May, 1890.

WM. LYON MARTIN,
Notary Public, Richmond County, Ga.

Exhibit C.

New York, N. Y., *May 6th*, 1890.

To the honorable Interstate Commerce Commission, Washington, D. C.:

The following-described railway lines, to wit, the East Tennessee, Virginia & Georgia railway, the Norfolk & Western railroad, common carriers and having a community of interest in the transportation of traffic between eastern seaboard cities of the United States and Chattanooga, Tenn., Memphis, Tenn., and Nashville, Tenn., respectfully make answer as herewith by the respective traffic officers of said companies signatories hereto, in conformity with law, to the complaint filed with your honorable body on April 19th, 1890, by the Board of Trade of Chattanooga, Tenn., as concerning an alleged discrimination in the adjustment of rates of transportation for freight between the cities of Boston, New York, Philadelphia, and Baltimore, and Chattanooga, Memphis, and Nashville, Tenn., reserving their right to make such further or more specific answer or argument in reference to each of the allegations made in said complaint that may seem proper to each of them, collectively or individually, whenever a hearing of said case may be ordered by your honorable body.

In answer to the charges contained or facts alleged in section 1, the respondents, jointly and severally, are willing to admit that the facts charged are true as stated.

In answer to the charges contained or facts alleged in section 2, of the complaint, the respondents admit the facts as charged.

18 In answer to the charges contained or facts alleged in section 3, the respondents admit that they have been and are now transporting property, and participating in through rates of freight charges for transporting the same, from the cities of Boston, New York, Philadelphia and Baltimore to the cities of Nashville, Memphis, and Chattanooga; but the respondents deny that the said cities of Nashville, Memphis and Chattanooga, compete for business in the same territory; and the respondents further deny that they are charging and collecting for transporting like property from said seaboard points to the city of Chattanooga higher rates under the same or substantially the same circumstances and conditions that they are charging and collecting for transporting like property to the cities of Memphis and Nashville.

In answer to the charges contained or facts alleged in section 4, the respondents admit that they do transport property shipped from the eastern seaboard points enumerated in section 3 to points in the State of Tennessee enumerated in said section, and transport it through the city of Chattanooga to the cities of Nashville and Memphis, and that said cities of Nashville and Memphis are respectively one hundred and fifty-one (151) and three hundred and ten (310) miles farther from said seaboard points than the city of Chattanooga.

In answer to the charges contained or facts alleged in section 5, the respondents admit the facts as charged, but they deny that their action in charging less rates for the longer haul to the cities of Memphis and Nashville is in violation of section 4 of the act to regulate commerce or any other provision of said act.

In answer to the charges contained or facts alleged in section 6, the respondents deny that the rates charged to Chattanooga are too high, or that they are unreasonable or unjust, or that they should be reduced by reason of any of the matters charged in said section 6 of said complaint.

In answer to the charges contained or facts alleged in section 7, the respondents deny that their action in charging lower rates to Nashville and Memphis than to Chattanooga in anywise violates either section 4 or section 2 of the act to regulate commerce. They deny that said rates unjustly discriminate against the merchants of Chattanooga and in favor of the merchants of Nashville and Memphis. They deny that said rates are in violation of section 3 of the act to regulate commerce, which forbids unreasonable preference to be given to any locality.

In answer to the charges contained or facts alleged in section 8, the respondents deny, in so far as the matters charged in said
19 section 8 may have any bearing upon questions raised by the complaint in this case, that they constitute a violation of section 1 of the act, or that the conclusions drawn therefrom afford sufficient evidence of what would be a reasonable compensation to the defendants for transporting property from the eastern seaboard points named to Chattanooga.

In answer to the charges contained or facts alleged in section 9, the respondents admit that the rates to Nashville and Memphis from the seaboard points mentioned in paragraph 3 of the complaint are not made through Chattanooga, but the respondents aver that this and other circumstances do justify them in charging less rates for a longer haul to Nashville and Memphis through Chattanooga from said eastern seaboard points via their line, than are charged to Chattanooga. The respondents deny that the rates to either Nashville or Memphis would be ample, just or proper compensation to them for the transportation of property from said eastern seaboard points to the city of Chattanooga.

In answer to the charges contained or facts alleged in section 10, the respondents deny the facts charged therein.

In answer to the charges contained or facts alleged in section 11, the respondents are advised and will insist that, whether or not the facts stated in said section may or may not be true, that they are wholly immaterial and irrelevant to the issue raised by the complaint.

In answer to the charges contained or facts alleged in section 12, the respondents do not admit that the rates from eastern seaboard points as set forth in said section are correctly stated, but they are content to refer to the tariffs on file with the commission, and to admit whatever may be shown by such records. The respondents deny that an inspection of such rates will in anywise substantiate

any of the conclusions set forth in any of the paragraphs of the complaint.

The respondents having fully answered, pray that said complaint may be dismissed and that they may be discharged with reasonable costs, etc.

EDWIN FITZGERALD,
Traffic Manager, East Tennessee, Virginia and Georgia Railway.

A. POPE,
General Freight Agent, Norfolk and Western Railroad.

Sworn to before me this seventh day of May, 1890.

E. JACKSON,
[SEAL.] *Notary Public, N. Y. Co.*

20 EXHIBIT D.

The Interstate Commerce Commission.

THE BOARD OF TRADE OF CHATTANOOGA
vs.
THE BALTIMORE AND OHIO RAILROAD COMPANY and Others.

Answer of the Baltimore and Ohio R. R. Co.

This defendant respectfully shows:

1. That this defendant makes through rates from the seaboard points named in the petition to Chattanooga, Memphis and Nashville, only under the tariffs, copies of which are herewith filed, marked "Defendant's Exhibit No. 1" showing the rates from New York, Philadelphia and Baltimore respectively to said points.

As will appear by the notation on said tariffs, freight for the points named is billed to Cincinnati at the tariff rate to Cincinnati under the official classification, and the remainder of the through rate is allowed as proportion south of the Ohio river. The said through rates are not made therefore under a joint prorating arrangement, but are made by adding to this defendant's regular tariff rate to Cincinnati the rates of the railroads south from that point.

This defendant has no part in determining the relative rates to Chattanooga, Memphis and Nashville respectively, and not being acquainted with the circumstances which determine the relative rates to those points, this defendant does not undertake to answer the allegations of the petition as to the unreasonableness of the differences between said rates. This defendant is in no way responsible for such differences, and takes no part in determining what those differences shall be.

Wherefore this defendant prays that the petition may be dismissed so far as concerns this defendant.

THE BALTIMORE AND OHIO RAILROAD COMPANY,
By JOHN K. COWEN.
HUGH L. BOND, JR., *Counsel.*

STATE OF MARYLAND, *City of Baltimore*, } *To wit:*

May 8th, 1890, before me, the subscriber, a justice of the peace of the State of Maryland, in and for the city of Baltimore aforesaid, personally appeared Charles E. Ways, the general freight agent of the Baltimore and Ohio Railroad Company, and made oath in due form of law, that he is the general freight agent of the Baltimore and Ohio Railroad Company, and that he has read the foregoing answer, and that the matters and facts therein stated are true, as he verily believes.

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ROBERT A. THURSBY, *J. P.*

EXHIBIT E.

Before the Honorable Interstate Commerce Commission.

THE BOARD OF TRADE OF CHATTANOOGA
vs.
THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILROAD Company *et al.*

The joint and several answers of The Central Railroad and Banking Company of Georgia and The Ocean Steamship Company of Savannah respectfully shows:

1. These defendants admit that the facts alleged in section 1 of said complaint are true as therein stated.

2. They admit that they are common carriers engaged in the transportation of passengers and property by railroad and water from seaboard points in the States of Massachusetts, New York and Maryland to points in the State of Tennessee.

3. In answer to the 3d section of said complaint these defendants say that they admit that they have been and are now transporting property and participating in through rates of freight charges for transporting the same from eastern seaboard points, to wit: from the cities of Boston, New York, Philadelphia and Baltimore to the following points in the State of Tennessee, to wit: Nashville, Memphis and Chattanooga; but these defendants deny that said three last-named cities compete for business in the same territory; and these defendants further deny that they are charging and collecting for transporting like property from said seaboard points to the city of Chattanooga higher rates under the same, or substantially the same, circumstances and conditions that they are charging and collecting for transporting like property to the cities of Memphis and Nashville.

4. These defendants admit that they transport property shipped at said eastern seaboard points to the points in the State of Tennessee enumerated in paragraph 3; but deny that they necessarily transport said freight through the city of Chattanooga to the said cities of Nashville and Memphis, these defendants having another line to said cities of Memphis and Nashville. They admit that said cities are, respectively, 151 miles and 310

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miles beyond Chattanooga from said seaboard points and the said city of Chattanooga.

5. These defendants admit that they refuse to transport like property to the city of Chattanooga at the same rates that they transport property from the said seaboard points to the city of Memphis or to the city of Nashville, and they admit that they charge less rates for hauling to said two last-mentioned places than they do to the city of Chattanooga; but they deny that their actions in charging less rates to the said cities of Memphis and Nashville is in violation of section 4 of the act to regulate commerce, or of any other provision of said act.

6. These defendants deny that the rates charged to Chattanooga are too high or that they are unreasonable, or unjust, or that they should be reduced by reason of any of the matters charged in said complaint.

7. These defendants deny that the transportation of property from said eastern seaboard points at lower rates to Nashville and to Memphis than to Chattanooga is in violation of section 4 of the act to regulate commerce, or that it is in violation of section 2 of said act. They deny that said rates unjustly discriminate against the merchants of Chattanooga in favor of the merchants of Nashville and Memphis. They deny that said rates are in violation of section 3 of said act to regulate commerce, which forbids unreasonable preference to be given any locality, and they say that the rates given to Memphis and Nashville are regulated and determined by other considerations than by the distance respectively of said places from said eastern seaboard points; that Memphis is on the Mississippi river, and the rates to said city are largely determined by this fact. The city of Nashville is on the Cumberland river, and the rates to that point are largely affected by this consideration.

8. These defendants deny that the rates mentioned in said complaint are violations of section 1 of the act to regulate commerce, and these defendants deny that any acts of theirs can be construed as admitting any violation of said section. These defendants say that the said complainant has no right to draw any conclusions from any acts of these defendants in soliciting freights from eastern points to Nashville and Memphis as any admission that they are violating any of the sections of said interstate-commerce act.

9. These defendants admit that the rates to Nashville
23 and Memphis from the seaboard points mentioned in paragraph 3 of the complaint are not made through Chattanooga, and they say that this and other circumstances fully justify them in making the rates of freight to Nashville and Memphis from eastern seaboard points, via their lines, less than the rates charged to Chattanooga, and they say that the rates to Chattanooga should not be made less than the rates to Nashville or Memphis, or the same amount, because there are other distinct circumstances which control the transportation of freight to said points.

10. These defendants say that the existence of water transportation to Nashville and Memphis does warrant the defendants in making a different rate to said points than is made to Chattanooga

and these defendants say that the rates to Chattanooga are reasonable and just to said Chattanooga and other cities in like situation.

11. These defendants are not advised as to what effect the opening of the Muscle Shoals canal in the coming summer will have upon the rates to Chattanooga; but these defendants say that such matters are now entirely irrelevant and immaterial to the questions now before the commission.

12. These defendants do not admit that the rates as set forth in the 12th paragraph of said petition are correctly stated, but they refer to the tariff on file in the office of the Interstate Commission as showing what said rates in fact are.

13. These defendants, further answering, deny that any inspection of the rates contained in said tariff will sustain any of the conclusions set forth in any of the paragraphs of said complaint.

And these defendants, having fully answered, pray that the said complaint may be dismissed against them, and that they may be discharged with their reasonable costs in this behalf sustained.

LAWTON & CUNNINGHAM,
Attorneys for the Central Railroad and Banking Company of Georgia and the Ocean Steamship Company of Savannah.

GEORGIA, }
Chatham County. }

W. F. Shellman, being duly sworn, says that he is traffic manager of The Central Railroad and Banking Company of Georgia, and for The Ocean Steamship Company of Savannah, defendants in this proceeding, and that the foregoing answer is true, as he verily believes.

W. F. SHELLMAN, *T. M.*

24 Sworn and subscribed to before me, this May 13th, 1890.
[SEAL.] H. W. JOHNSON,
Not. Pub., Chatham Co., Geo.

EXHIBIT F.

Answer to Complat., Chattanooga Board of Trade.

Norfolk and Western Railroad Company, office of general freight agent.

ROANOKE, VA., *May 13th*, 1890.

E. A. Moseley, Esq., sec'y Interstate Commerce Commission, Washington, D. C.

DEAR SIR: I beg to transmit herewith a farther answer of the Norfolk and Western Railroad Company, a common carrier, at interest in the transportation of traffic between eastern seaboard cities and Chattanooga, Tenn., to the complaint of the board of trade of said city of Chattanooga, concerning discriminations in freight rates.

The Norfolk and Western Railroad Company, by myself, joined with the East Tennessee, Virginia and Georgia Railroad Company in a formal answer to said complaint, under date of May 6, 1890, but has considered it proper to make this farther answer in order that the commission may be fully informed as to the views entertained by the Norfolk and Western Railroad Company as one of the carriers at interest, upon the merits of the particular questions complained of.

Very respectfully, A. POPE, *G. F. A.*

ROANOKE, VA., *May 12th*, 1890.

To the honorable Interstate Commerce Commission, Washington, D. C.:

The Norfolk and Western Railroad Company, a common carrier and having a community of interest in the transportation of traffic between the eastern seaboard cities of the United States and Chattanooga, Tenn., Memphis, Tenn., and Nashville, Tenn., and various other points in the South and Southwest reached through Chattanooga, Tenn., with other railway lines, and likewise with steamship lines named in the complaint of the Board of Trade of Chattanooga, Tenn., made to your honorable body on April 19, 1890, as concerning alleged discriminations in the adjustment of rates of transportation of freight between the cities of Boston, New York, Philadelphia and Baltimore, and Chattanooga, Memphis and Nashville, Tenn., respectfully make, on their own behalf, a further answer to said complaint in addition to the general answer made under date of May 6, 1890, in connection with the East Tennessee, Virginia and Georgia railway, and confirming the statement as made, specifically or generally, in said answer, beg to admit the general correctness of the mileages referred to, and as to the correctness of the total rates named would respectfully refer to the tariffs that are on file in the office of your honorable body and which are matters of record; denying likewise in general and in detail the similarity of conditions alleged, and the correctness of the statements made in said complaint, that the areas of trade in the territory reached by the three points, (viz, Chattanooga, Nashville and Memphis) are uniformly open alike to each, or would under uniform conditions of rates of freight be penetrated with equal facility by each of these markets. They likewise submit that the charges made are unsupported by any specific statement of the measure of damage sustained, either now or in the past, to the mercantile, manufacturing or other industrial interests of the city of Chattanooga, either in a collective or individual form, and that because of the absence of proof of said specific measure of damage the complaint should be considered as wholly in the nature of rivalry or competition between the city of Chattanooga and the other cities referred to.

The Norfolk and Western railroad likewise respectfully submits that it does not believe that it has violated or is now violating any portion of the 4th section of the act to regulate commerce, or any other section thereof, by participating as a party at interest in the

adjustment of the rates in question or in the transportation of property under the rates now employed; nor is it now, nor has it been at any time in the past, their intention to violate said law in any particular in said rate adjustment or in said transportation. It believes that the circumstances of direct water competition at the points of contact therewith, especially at Memphis, via the various lines along the Atlantic and Gulf coast via New Orleans and the Mississippi river, and likewise the effect of direct water competition at Nashville by means of the Cumberland river and the con-
26 nections that it enjoys with the Ohio river, and likewise the controlling forces of competition by other railway lines at Nashville than those over which the service in connection with the Norfolk and Western railroad is performed as between eastern cities and Nashville, which controlling forces of competition are created by the adjustment of rates over the direct railway lines from eastern markets to the cities of Cincinnati, Louisville and other dependent territory, and the adjustment of rates from said points in connection with said rates to said cities being made dependent at all times upon the rates that are in effect by the water routes named, and as a consequence, by combinations thus made, yield the total rates that are employed in Nashville traffic,—are causes that give ample justification to the use by the way of lines through Chattanooga of the rates that are in effect at Nashville. It is respectfully submitted that the forces of direct water competition referred to, being in no respect amenable to the control of the act to regulate commerce, are uncontrollable thereby, and that these and the other forces referred to are not of recent growth, nor are the rates that have been operative to the cities of Nashville and Memphis of recent adjustment. The whole fabric of rates on eastern traffic to the cities named has been built for a long series of years upon this basis or others approximating thereto, and the traffic of the cities referred to has been continuously done thereupon, and whatever degree of prosperity has been yielded to these cities on said eastern cities' traffic is the result of these rate adjustments. Along the line of railway, 310 miles in length, between Chattanooga and Memphis, at the various points thereon that are junctions with other railways, or at the various stations, intermediate, rates have been adjusted relatively higher than to Memphis, as said points were more or less distant from Memphis or as the effect of water competition became weaker. For instance, rates between New York and Grand Junction, Tenn., 52 miles distant from Memphis, and between New York and Corinth, 93 miles distant from Memphis, and between New York and Decatur, Ala., 188 miles distant from Memphis, are uniform with those now current to Chattanooga, and there is no evidence that this adjustment is in any respect unsatisfactory to the markets or points named. A precisely similar state of rate adjustment exists upon the direct line between Chattanooga and Nashville, rates between New York and Murfreesboro, Tenn., 33 miles distant from Nashville, being $1.16, $0.99, $0.78, $0.57, $0.50, $0.42; between New York and Decherd, Tenn., 82 miles distant
27 from Nashville, are $1.33, $1.15, $0.94, $0.68, $0.60, $0.49 This is equally true for points intermediate between Chatta

nooga and Cincinnati. Rates between New York and Rockwood, Tenn., 70 miles distant from Chattanooga, are $1.20, $1.08, $0.92, $0.66, $0.57, $0.52; between New York and Tracy City, 84 miles distant from Chattanooga, $1.36, $1.33, $1.10, $0.87, $0.78, $0.71.

Your respondent invites attention to the fact that with the revision of the rate adjustment as demanded by the complainants, on lines of uniformity at Chattanooga with rates at Nashville, that intermediate points between Nashville and Chattanooga would be given the same rates as those two points. Upon the same theory of reasoning, rates between Chattanooga and Cincinnati would not be higher than the current Nashville rates. Rates between Chattanooga and Memphis would not be higher than the Memphis rates, and those protective conditions for assuring to the market of Chattanooga the advantages as a point of concentration of traffic and distribution therefrom to the surrounding territory, as now demanded by the complainants, would be impossible.

Your respondent believes that there are natural causes between Nashville and Chattanooga, Tenn., or between Cincinnati, Ohio, and Chattanooga, Tenn., in the shape of ranges of mountains and streams that divide the territories naturally, and as a consequence, commercially, that absolutely prevent under any reasonable conditions, a growth of trade to any extent northward from Chattanooga in the direction of Nashville for any considerable distance along the line of the Nashville, Chattanooga and St. Louis railway, or northward in the direction of Cincinnati along the line of the Cincinnati Southern railway; that the character of the productions of the territories named, the interdependence of the communities in said sections, one upon another and in their relations towards the larger markets that lie in the direction of Ohio, Kentucky or Indiana, as well as the community of interest between the cities of Nashville or Cincinnati and the towns along the respective lines of railway named, are sufficient to determine or control the trade of said communities toward said cities or other- adjacent thereto.

The adjustment of rates between eastern cities and Chattanooga in a uniform measure with those for all important points in interior Alabama and Georgia, was because of the necessity that existed, commencing in 1868, for harmonizing the various commercial interests of said towns and cities, and as the result of such
28 effort, a system of rate adjustment was indicated in 1874, under the auspices of an association then formed, called the Southern Railway and Steamship Association, which, first embracing the cities of Atlanta, Chattanooga, Montgomery, Selma, Rome, became enlarged in its area as other railway lines were built and as the freight interests of other towns interested became enlarged. The cities or towns taking rates uniform with Chattanooga at this time are, Anniston, Ala., Athens, Ga., Atlanta, Ga., Birmingham, Ala., Cedartown, Ga., Columbus, Ga., Dalton, Ga., Montgomery, Ala., Eufaula, Ala., Rome, Ga., Selma, Ala., Meridian, Miss., Opelika, Ala., Talladega, Ala., and possibly others. The natural conditions that exist, as well as the transportation facilities that are enjoyed by each of these towns, make them more or less competitive with each

other, and a large portion of them competitive with Chattanooga, those more particularly competitive with Chattanooga being Anniston, Ala.; Atlanta, Ga.; Birmingham, Ala.; Rome, Ga., and Dalton, Ga.; and taking New York as a representative point, the rates to said points are as have been named by the complainants, viz: $1.14, $0.98, $0.86, $0.73, $0.60, and $0.49, for the six figured classes of merchandise traffic; and your respondent believes that the competition for business and the interchange of traffic one town with another or one territory with another, in which Chattanooga is most largely if not wholly interested, is with the towns named or with the territories that said towns likewise reach, and that it is in reference to rate adjustment in connection with these towns that the efforts of the complainants should be directed.

Under these uniform conditions of rates for a long series of years, absolutely peaceful conditions have maintained and the various communities have relatively prospered, without such prosperity particularly infringing upon that of their neighbors; and the equity of this adjustment can be defended upon the following theory of calculation, there being three leading lines from eastern cities that monopolize the traffic to the towns referred to, viz: those via Savannah, Ga., those via West Point, Va., over the Richmond and Danville system of lines, and those via Norfolk and the Virginia, Tennessee and Georgia air line, the average distance from New York to the 14 southern points named, including Chattanooga, being via Savannah, 639 miles, via the Richmond and Danville lines, 606 miles, and via Norfolk and the Virginia, Tennessee and Georgia air line, 642 miles; and it will therefore be seen that as between the leading competitors for this traffic, the average distance by each varies but slightly.

29 In addition to these lines there are all-rail route connections through Washington and Alexandria via the Richmond and Danville system and through Harrisburg and Hagerstown, Md., via the Norfolk and Western system, but by adjustment as between the parties at interest, uniform or differential rates as may be agreed upon are maintained by these all-rail lines. This question of rate adjustment between eastern and southern cities having been brought to the attention of the board of arbitration of that association of roads known as the Southern Railway and Steamship Association, upon the demand for certain revision of rates to Chattanooga, Tenn., Atlanta, Ga., and other points, on May 28, 1889, exhaustive argument was made by all parties to the case, and the decision of the board as rendered on July 19, 1889, was that the rates to Chattanooga and Atlanta remain as at present in effect, and said rates are those that are now in force. A copy of the decision of said board of arbitration is attached hereto and made part of this answer, and if desired, the various arguments upon this question can likewise be submitted.

Therefore it is, that reviewing the adjustment of rates as between Chattanooga, Memphis, and Nashville, your respondent believes that the conditions of transportation to Memphis and to Nashville are substantially dissimilar from those that exist to Chattanooga; that

no injury accrues to the traffic of Chattanooga by said adjustment and that no measure of damage can be successfully shown. Your respondent likewise believes that the controlling forces of competition as between the markets to the south and southwest of Chattanooga, in the territories directly open to the competition of traffic, one with another, render it proper on the part of the various transportation companies to adjust their rates on the lines of uniformity that exist; that the conditions requiring said adjustment originated many years ago, at a time that rates averaged from fifty to sixty-six per cent. higher between eastern cities and said territory than those that are now current; that the revision of these rates was the result of conference from time to time had with the mercantile bodies or shippers, either of large or small quantities of freight, in each of the cities and towns named; that it became necessary to meet the questions as they were presented, and to effect the adjustments that were then made; that the maintenance of these rates, which has been accomplished by the various association methods that have been employed, has been absolutely essential to the well being of the communities involved; and that these rates have been in effect with but slight variations for a series of years, and testimony is concurrent that they are giving general satisfaction to the various communities at interest.

In support of this method of adjustment, your respondent would refer to the opinion set forth in various pages of the decision rendered by your honorable body in the case of the Louisville and Nashville railroad, as of date June 15th, 1887, as particularly appearing on pages 17, 20, 24, and 25, and as recapitulated in the decisions reached in said case, as appearing in detail on pages 27, 28, and 29.

Therefore, your respondent asks that they shall not be required by any order of your honorable body, either to participate in advanced rates to Memphis or to Nashville, or in reduced rates to Chattanooga, most respectfully assuring you that in case a reduction of the rates to Chattanooga is ordered, the entire fabric of rate construction to the various competing points in the south and southwest that are enumerated will likewise necessarily be reduced, and that, therefore, the positions of competition relatively between Chattanooga and the various points at interest will in nowise be changed, nor the traffic of Chattanooga receive that material and special benefit that it is assumed by the complainants in the present case should be enjoyed by that city.

Reserving the right to make such further and more specific answer that may become necessary, this answer is respectfully submitted.

THE NORFOLK AND WESTERN RAILROAD COMPANY,
By A. POPE, *General Freight Agent.*

STATE OF VIRGINIA, *City of Roanoke,* } *To wit:*

I, D. H. Scott, a notary public, in and for the city aforesaid, do hereby certify that A. Pope, whose name is signed to the foregoing writing, has this day acknowledged the same before me in the said

city aforesaid. Given under my hand and notarial seal this 13th day of May, 1890.

[SEAL.] D. H. SCOTT, *N. P.*

EXHIBIT G.

Western & Atlantic Railroad Co., traffic department.

ATLANTA, GA., *May* 12, 1890.

The Interstate Commerce Commission, Washington, D. C.

GENTLEMEN: I have your communication of April 19th, 31 inclosing copy of petition filed against our company, embracing statement of charges made by the Board of Trade of Chattanooga—the substance of the complaint being that this company, with others named in the petition, is violating the interstate-commerce law, in that we transport goods from eastern cities to Nashville and Memphis at less rates than to Chattanooga.

Inasmuch as this company is a very small factor in either the participation of rates or of the volume of business transported, I do not consider it necessary to take up in their number the sections of the complaint and answer each separately. I thing that one general answer for this company will meet all the specifications.

I will state that this company is a member of the Southern Railway and Steamship Association and has a part in the fixing of rates from eastern cities to Chattanooga, and other points south and southeast of that city. The jurisdiction of the association does not extend beyond Chattanooga on the north or west, and therefore the association has no part whatever in fixing the rates to either Nashville or Memphis.

The rates from eastern cities to the two points named are made by a combination of the trunk-line rates to Louisville or Evansville and the water rates from those two cities or either of them to Nashville and Memphis.

This company abstained for years from participating in handling business from eastern cities to Nashville and Memphis; in fact, even at present we have no agent in Memphis, and probably do not handle a shipment a month or one in six months to that city.

Seeing, however, that there was considerable business going from the East to Nashville, and that our abstinence from participation in it did not prevent either the volume of business or the rates from being maintained, we concluded that we would make an attempt to handle a portion of it.

Inasmuch, therefore, as the rates to Nashville in the first case are made by lines not only not working with us, but working in competition to our line, and as our withdrawal from participation in handling the business would not prevent one pound from going there, and would not affect the rate either by raising or lowering it, it seems to us that the city of Chattanooga should not (to use a homely figure of speech), desire to act the "dog in the manger" by forcing us out of handling it.

We could better afford to withdraw altogether from transporting

any business from eastern cities to Nashville than we could to reduce the Chattanooga rate, which is a just and reasonable
32 rate within itself, and which is on a parity with the rates from the East to Atlanta, Rome, Dalton, and other cities in this territory with which Chattanooga competes. In other words, inasmuch as this company and its associates have given as low rates to Chattanooga from the East as we give from the East to Atlanta, Rome, and Dalton, through which points the Chattanooga freight is transported, it occurs to us that instead of showing a spirit of unfriendliness to Chattanooga we are positively favoring her.

The lines from the East to Chattanooga via Savannah and Charleston, with which this company works, charge Atlanta as high rates as they charge Chattanooga, which is 140 miles further, although the freight is transported through Atlanta to get to Chattanooga. The same statement practically applies to the rates from the East to Rome and Dalton as compared with Chattanooga, the haul being through Rome and Dalton to Chattanooga, a greater distance, with Chattanooga, nevertheless, having as low rates as the points nearer the East.

To repeat, therefore, inasmuch as this company and its associates do not make the rates from the East to Nashville, and as the withdrawal by all of us from handling any business to Nashville would not affect either the eastern tonnage or the rates to Nashville, we cannot see that we should justly be called upon to comply with the demands of the Chattanooga board of trade.

We consider that our participation in business from eastern cities to Nashville, and to Memphis as well, is allowed by the very letter of the interstate-commerce law.

Yours very truly, JOSEPH M. BROWN,
Traffic Manager.

GEORGIA, }
Fulton County. }

Personally appeared before me, Charles T. Watson, a notary public in and for the county of Fulton, Joseph M. Brown, traffic manager of the Western and Atlantic Railroad Company, who, being duly sworn, says on oath that the above statements are true to the best of his knowledge and belief.

Subscribed and sworn to before me this 16th day of May, 1890.

[SEAL.] C. T. WATSON,
Notary Public.

33 EXHIBIT H.

THE BOARD OF TRADE OF CHATTANOOGA }
vs.
THE DELAWARE & HUDSON CANAL CO., &C. }

The president, managers, and company of The Delaware and Hudson Canal Co., the defendant above named, in answer to the petition herein, respectfully shows as follows:

1st. Said defendant denies any knowledge or information suffi-

cient to form a belief as to the first allegation or section of said petition.

2nd. Said defendant denies on information and belief the 5th, 6th, 7th, 8th, 9th, 10th, 11th and 12th allegations or sections of said petition.

3rd. The said defendant in further answer to said petition alleges that the defendant has no control over the rates referred to in said petition, but that said rates are arranged by a joint committee representing the trunk lines aforesaid, and that this defendant is of necessity obliged to join in any through rates that may be issued by the executive committee of said trunk lines, and this defendant denies on information and belief that it has violated or is violating any clause of the interstate-commerce act.

H. G. YOUNG,
Second Vice-President.

STATE OF NEW YORK, }
County of Albany, } *ss:*

H. G. Young being duly sworn, deposes and says that he is one of the officers of the defendant; that he has read the foregoing answer, and knows the contents thereof; that the same is true to his knowledge, except as to the matters therein stated to be alleged on information and belief; and that as to those matters he believes it to be true.

H. G. YOUNG.

Subscribed and sworn to before me this 19th day of May, 1890.
[SEAL.] WM. F. RATHBONE,
Notary Public, Albany Co., N. Y.

34 EXHIBIT I.

Before the Interstate Commerce Commission.

THE BOARD OF TRADE OF CHATTANOOGA
vs.
THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILWAY COMPANY *et al.*

The Pennsylvania Railroad Company, one of the respondents in the above-stated case, for answer to the complaint filed therein, says:

1. That in respect to the matters contained in the said complaint, it has not violated any of the provisions of the act to regulate commerce.

2. That it carries freight over its line as part of three separate through routes from the North to Chattanooga, Nashville and Memphis, namely:

By way of the Delaware peninsula via Norfolk, the Norfolk and Western railroad, and the East Tennessee, Virginia and Georgia railway.

Via the Pennsylvania railroad, Cumberland Valley railroad, Shenandoah Valley railroad, Norfolk and Western railroad, and the East Tennessee, Virginia and Georgia railway.

Via its main line to Pittsburgh, and thence via Pittsburgh, Cincinnati and St. Louis railway via Cincinnati.

That it receives its proportion of the through rate for transportation by either of these routes; that such through rates are not fixed by itself, the rates by the first two routes being fixed by an association of corporations known as the Southern Railway and Steamship Association, of which the Pennsylvania Railroad Company is not a member; that it has no voice in the establishment of the rates by such routes, but accepts such rates as the companies, members of such association, direct it to charge; that the East Tennessee, Virginia and Georgia Railway Company and the Norfolk and Western Railway Company are members of such association.

That the rates for the third route referred to above are fixed by the Trunk Line Association, of which this respondent and many other companies are members, and that such rates were deemed by said association to be just and reasonable.

3. That for further specification of the justification of the rates by the associations aforesaid reference is made to the answers of the other defendants.

35 Wherefore, this respondent prays that the said complaint be dismissed.

THE PENNSYLVANIA RAILROAD COMPANY,
By WILLIAM H. JOYCE,
General Freight Agent.

JAMES A. LOGAN,
Of Counsel for Def't.

STATE OF PENNSYLVANIA, }
City of Philadelphia. }

Before me, the undersigned, personally appeared William H. Joyce, who being duly sworn, doth depose and say that he is the general freight agent of The Pennsylvania Railroad Company, one of the defendants in this proceeding, and that the foregoing answer of that company is true as he verily believes.

WILLIAM H. JOYCE.

Sworn and subscribed before me this 16th day of May, A. D. 1890. Witness my hand and notarial seal.

[SEAL.] A. P. BURCHELL,
Notary Public.

EXHIBIT K.

The Answer of the Nashville, Chattanooga and St. Louis Railway to the Petition of the Board of Trade of Chattanooga.

In answer to the first paragraph of the petition, respondent says that it does not know and cannot admit that the petitioner is char-

tered under the laws of Tennessee, or what its objects are, and will require the petitioner to show to the satisfaction of the commission that it is a corporation duly and legally chartered under the laws of the State of Tennessee.

In response to the second paragraph of the petition, respondent says that it is a common carrier by railway of passengers and freight, but not in the States named or elsewhere, except in the States of Georgia, Tennessee, Alabama and Kentucky, and that in the States last mentioned, in respect to passengers or freight passing through such States, it is subject to the act to regulate commerce. It says that it owns and operates a railway from Chattanooga to Nashville, and *vice versa*.

In response to paragraph No. 3, it says that it receives no freight or passengers at the points named, to wit: New York, Massachusetts, Philadelphia and Baltimore. It admits that it takes at
36 through rates all freight or passengers brought to Chattanooga by other roads, and destined for Nashville, Tennessee, which is tendered to it at Chattanooga, Tennessee, and destined for Nashville, Tennessee, but denies that it carries any freight to Chattanooga from the East, as it neither owns nor operates any railroad running into Chattanooga, except the one from Nashville. It denies that it participates in through rates upon any freight brought into Chattanooga, and destined therefor, by any of its codefendants, or that it participates in any rate, through or otherwise, brought to or stopped at Chattanooga by any of its codefendants, but it does admit that it takes freight destined for Nashville of its codefendants at Chattanooga from the points mentioned at through rates, and participates therein with its codefendants.

In reply to paragraph No. 4, respondent says that Nashville is 151 miles distant from Chattanooga, and "beyond it," in respect to all freight delivered to it at Chattanooga, by any of its codefendants, and it further admits that freight shipped to Nashville from the points named, and brought to Chattanooga by any of its codefendants, is taken to Nashville at a cheaper rate than when the same is stopped at Chattanooga, but this respondent has nothing to do, in fixing the rates *in* or participating therein, on freight shipped from any of the named points to Chattanooga, and that it only participates in through rates on shipments to Nashville from the points named.

Respondent denies the allegations of the 5th paragraph entirely, and says that it has nothing to do with the shipments from the eastern seaboard to Chattanooga and does not participate therein.

Respondent denies the allegations of the 6th paragraph of the petition.

Respondent denies the 7th allegation of the petition.

Respondent denies the 8th allegation of the petition, in so far as the same respects this respondent.

Respondent says that it is not bound to make answer to the allegations of the 9th paragraph of the petition, for the reason that they do not apply to it, and it has nothing to do with shipments

from the points named to Chattanooga, and does not participate therein.

Respondent says in respect to the allegation of the 10th paragraph that the same is an argument and alleges no fact that the respondent is called on to admit or deny, but it says that there is a waterway from Chattanooga to Nashville, for the whole or part of the way; that Chattanooga is located on the Tennessee river,
37 which empties into the Ohio river, and that Nashville is located on the Cumberland river, which empties into the Ohio river, and these are navigable waters.

In response to the 11th paragraph, respondent says that it is an argument based upon what it assumes will be a future fact, and which may or may not transpire, and is certainly not an existing fact upon which the commission can give a judgment.

In response to the 12th paragraph, respondent says that the same is an argument with illustrations, and merely contrasts the acts and doings of other railroads with defendant's, and may or may not be good and valid arguments and illustrations.

For the Nashville, Chattanooga and St. Louis railway:

EAST & FOGG AND
CHAS. D. PORTER.
J. W. THOMAS, *President.*

STATE OF TENNESSEE, }
County of Davidson. }

J. W. Thomas, being duly sworn, says that he is the president and general manager of The Nashville, Chattanooga and St. Louis Railway, defendant in this proceeding, and that the foregoing answer is true, as he verily believes.

Subscribed and sworn to before me, this 20th day of May, 1890.

[SEAL.] J. T. SPAULDING,
Notary Public.

EXHIBIT L.

Before the Interstate Commerce Commission.

THE BOARD OF TRADE OF CHATTANOOGA
against
THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILWAY Company, * * * The New York, Lake Erie and Western Railroad Company, and Others.

The New York, Lake Erie and Western Railroad Company, one of the respondents named in the above-entitled proceeding, for a separate answer to the petition of the complainant in this proceeding, says:

First. It has no knowledge of the matters alleged in the first paragraph of said petition, and therefore it can neither admit nor deny the same, but requires proof thereof.

38 Second. This respondent admits that it engaged, with some of its corespondents, in transporting property and partici-

pating in through rates of freight charges for transporting the same, from the following points, which are designated as eastern seaboard points, namely: Boston, Massachusetts, and New York city, New York; but it avers that it is not now, and has not been heretofore, engaged in transporting freight from Philadelphia, Pennsylvania, or Baltimore, Maryland.

Third. The respondent admits that it is a common carrier engaged in interstate commerce, and, as such common carrier, is subject to the act to regulate commerce.

And this respondent further says that the transportation rate from New York to Chattanooga is made from the sum of two local freight rates via Cincinnati, this respondent charging from New York to Cincinnati its full and regular tariff rate, and the railroads leading south from Cincinnati charging their local tariff rate from Cincinnati to Chattanooga, making the through tariff to Chattanooga two separate and distinct proportions.

Fourth. And this respondent avers that the through rates from New York city to Memphis and Nashville, Tennessee, are made via Louisville, Kentucky, in competition with the water route via New Orleans, Louisiana, and that this respondent accepts as its proportion of the through rates to Memphis and Nashville its *pro rata* proportion of the through rate based on mileage, after allowing the necessary bridge toll at Louisville; and as the freight and traffic sent by this respondent are sent direct to Memphis and Nashville via Louisville, as aforesaid, and do not pass through Chattanooga, this respondent is advised, and therefore avers, that the Board of Trade of Chattanooga has no legal ground of complaint against this respondent under the acts to regulate commerce, as it has no control whatever of the rates to Chattanooga, they being, as before stated, made compulsory by the charge of the local tariff rate from Cincinnati, Ohio, to Chattanooga, while the rates of this respondent from New York city to Memphis and Nashville are made, as hereinbefore stated, in competition with the water route via New Orleans, which competition does not exist at Chattanooga.

Fifth. And this respondent further avers that the whole matter of making rates to all the points above mentioned is in accordance with the action taken by the Trunk Line Association after
39 full and careful consideration of the subject, and said rates are made uniform by all roads leading from New York and Boston to the points hereinbefore mentioned.

Sixth. The respondent having fully answered each and all of the allegations of the complainant's petitions, it respectfully asks that the same, so far as it applies to this respondent, may be dismissed.

THE NEW YORK, LAKE ERIE AND WESTERN RAILROAD COMPANY,
By J. A. BUCHANAN, *Its Attorney.*

STATE OF NEW YORK, *City and County of New York,* } ss:

George H. Vaillant, of New York city, being duly sworn, says that he is the freight-traffic manager of The New York, Lake Erie

and Western Railroad Company, one of the respondents in this proceeding, and that the foregoing answer is true, as he verily believes.

GEORGE H. VAILLANT.

Sworn to before me this 26th day of May, 1890.

GEO. E. GRANT,

[SEAL.] *Notary Public, N. Y. City and Co.*

EXHIBIT M.

The Interstate Commerce Commission.

THE BOARD OF TRADE OF CHATTANOOGA

vs.

THE BOARD OF TRADE OF CHATTANOOGA, GEORGIA RAILWAY, The Norfolk and Western Railroad, The Old Dominion Steamship Company, The Western and Atlantic Railway Company, The Central Railroad and Banking Company of Georgia, The Georgia Railroad, The Ocean Steamship Company of Savannah, The South Carolina Railway, The Clyde Steamship Company, The Cincinnati, New Orleans and Texas Pacific Railway, The Baltimore and Ohio Railroad Company, The Central Railroad of New Jersey, The Nashville, Chattanooga and St. Louis Railway, The Pennsylvania Railroad Company, The Pennsylvania Company, The New York, Lake Erie and Western Railroad, The New York and New England Railroad, The Delaware and Hudson Canal Company.

Answer of the Cincinnati, New Orleans and Texas Pacific Railway Company.

I. Defendant admits that petitioner is an association of the merchants and manufacturers of the city of Chattanooga, in the State of Tennessee, chartered under the laws of said State for the purposes named in petitioner's complaint.

II. Defendant says that it is a common carrier operating, as lessee thereof, a railway, known as the Cincinnati Southern railway, extending from the city of Cincinnati, in the State of Ohio, through the States of Kentucky and Tennessee, to the city of Chattanooga, Tenn.

III. Defendant admits that it is a common carrier and is concerned in the transportation of passengers and property by railroad and water from seaboard points in the States of Massachusetts, New York, Pennsylvania, and Maryland to points in the State of Tennessee in the capacity of an intermediate connecting carrier over its line of railway above described.

IV. Defendant admits that it is, conjointly with the defendants parties hereto, transporting property and participating in through rates of freight charges therefor from the points designated as eastern seaboard points, viz: Boston, New York, Philadelphia, and

Baltimore, to the cities of Memphis and Chattanooga, Tenn., but not to the city of Nashville, Tenn.; that the city of Nashville, Tenn., is not on defendant's line of railway, nor does defendant operate or control any part of any through route from the aforesaid eastern seaboard points to said Nashville. Defendant admits that the through rates aforesaid are lower for the transportation of like property from said eastern seaboard points to the city of Memphis than to the city of Chattanooga, but it denies that the circumstances are the same or substantially the same under which said transportation to said cities is conducted.

V. Defendant admits that it participates in the transportation of property shipped at eastern seaboard points to the cities of
41 Memphis and Chattanooga, and that such property is in a few instances transported through the city of Chattanooga to the city of Memphis, but it says that the charges for transporting such property, so far as its participation therein is concerned, is determined and controlled by the fact that between Cincinnati, Ohio, at which point defendant's connection with such transportation begins, and the said city of Memphis, Tenn., there extends a water route, along the Ohio and Mississippi rivers, over which, at all seasons of the year, the business of transporting such property is carried on by a relatively cheap and inexpensive method, which fixes the rate which must be accepted by all railroads doing business between said Cincinnati and said Memphis, which said rates are much below what would be a fair and reasonable compensation for such service by rail, and if applied to points not favored by nature with water routes, would prove ruinously inadequate to the cost of the service performed.

VI. Defendant says that the rates from said eastern seaboard points to said Chattanooga are not unreasonable and unjust in themselves and do not subject said city of Chattanooga to any undue or unreasonable prejudice or disadvantage.

THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY,
By EDWARD COLSTON, *Its Attorney.*

STATE OF OHIO, *Hamilton County,* } ss:

Before me, David F. Kronacher, a notary public in and for said county and State, personally appeared C. C. Harvey, vice-president of The Cincinnati, New Orleans and Texas Pacific Railway Company, one of the defendants in above case, who, being duly sworn, deposes and says that the facts set forth in the foregoing petition are true, as he verily believes.

C. C. HARVEY.

Sworn to before me and subscribed in my presence this 6th day of June, 1890.

DAVID F. KRONACHER,
Notary Public, Hamilton County, Ohio.

[SEAL.]

42 EXHIBIT N.

The Interstate Commerce Commission.

BOARD OF TRADE OF CHATTANOOGA
vs.
THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILWAY ET AL.

The answer of The New York and New England Railroad Co., one of the parties named as respondents in the above-entitled petition.

1. This respondent neither affirms nor denies the allegations in said petition, except as hereinafter may appear, but leaves the petitioner to prove the same.

2. It denies that the position of Chattanooga is the same or like that of Memphis and Nashville, and that Chattanooga has, or will have, means of water communication and transportation, such as Memphis and Nashville now enjoy.

3. It denies that the present through rates unjustly discriminate against the merchants of Chattanooga or give an unreasonable preference to any locality, or in any way violate the act of Congress to regulate commerce.

4. This respondent prays leave to file this, its answer to the aforesaid petition, and to submit itself to the jurisdiction of said Interstate Commerce Commission.

THE NEW YORK AND NEW ENGLAND RAILROAD COMPANY,
By CHARLES HOWARD, *General Manager.*

COMMONWEALTH OF MASSACHUSETTS, *Suffolk,* } *ss:*

Then personally appeared the above-named Charles Howard and made oath that the facts alleged in the foregoing answer are true to the best of his knowledge and belief, before me—

R. D. WESTON SMITH,
Justice of the Peace.

Boston, June, 1890.

43 EXHIBIT O.

The Interstate Commerce Commission.

THE BOARD OF TRADE OF CHATTANOOGA
against
THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILWAY COMPANY, * * * The South Carolina Railway Company, and Others.

D. H. Chamberlain as receiver of the South Carolina Railway Company in answer to the petition herein says:

1. That it is true that the South Carolina Railway Co. is engaged

with some of the codefendants named in transporting property and participating in through rates of freight charges for the same from the points on the eastern seaboard, as designated in the 2nd paragraph of said petition, being a link in the route made by connection with the Clyde steamship line at one terminus and the Georgia railroad at the other.

2. That it is true that the rates from New York and other eastern seaboard points to Memphis and Nashville are lower than the rates to Chattanooga, but respondent denies that the conditions and circumstances are the same, or substantially the same, denies that the rates to Chattanooga are too high, or that they are unreasonable or unjust or in violation of any of the provisions of the act to regulate commerce.

3. This respondent, in further answer to said petition and in justification of such acts as are herein admitted or as may be proved and are pertinent to the South Carolina Railway Company, of which he is receiver, avers that the rates of transportation from New York and other eastern seaboard points to Memphis and Nashville are made by railway corporations and associations with which his company has no connection; that neither he nor the South Carolina Railway Company nor the companies which form the line of which it is a link have any voice in or control in the making of such rates from eastern cities to said points, said rates being made in competition with the water route via New Orleans, which competition does not exist at Chattanooga, and the line of which respondent's company is a part simply meets the rate so made, not being able to affect the same by action or inaction, that it accepts the *pro rata* proportion of such through rate thus made compulsory, and as its business to such points is small it would be better for it to withdraw altogether from any participation in such business rather than reduce the rates to Chattanooga as prayed for in said petition.

4. The respondent further says that many of the matters and things stated in said petition are beyond his knowledge; he therefore denies all the allegations of said petition not hereinabove specifically admitted, and prays to be hence dismissed with his reasonable costs.

WM. H. BRAWLEY,
Att'y for D. H. Chamberlain, Receiver.

STATE OF SOUTH CAROLINA:

D. H. Chamberlain, being duly sworn, says that the facts stated in the foregoing answer as of his own knowledge are true; those stated as on information and belief, he believes to be true.

D. H. CHAMBERLAIN.

Sworn to and subscribed before me this 12th day of June, 1890.
[SEAL.] NATH'L LEVIN,
Notary Public.

EXHIBIT P.

Before the Interstate Commerce Commission.

BOARD OF TRADE OF CHATTANOOGA
vs.
THE CENTRAL RAILROAD COMPANY OF NEW JERSEY and Others.

Answer of the Central Railroad Company of New Jersey.

The Central Railroad Company of New Jersey, by Robert W. de Forest, its attorney, answers the complaint herein as follows:

First. It has no knowledge or information sufficient to form a belief as to any of the allegations of the complaint which relate to business done by the complainants or by railroad companies other than itself.

45 Second. It denies that it makes through rates from any seaboard points named in the petition to Chattanooga, Memphis, and Nashville.

Wherefore, it prays that the petition may be dismissed so far as concerns it.

ROBERT W. DE FOREST,
Counsel C. R. R. of N. J.

CITY, COUNTY, AND STATE OF NEW YORK, *ss:*

Samuel Knox, being duly sworn, on his oath, says:

I am secretary of the Central Railroad Company of New Jersey; I have read the foregoing answer, the same is true to my knowledge, except as to matters therein stated on information and belief, and as to those matters I believe it to be true.

SAM'L KNOX.

Sworn to before me this 17th day of June, 1890.

[SEAL.] W. C. JOHNSON,
Notary Public for Kings Co.

Certificate filed in N. Y. county.

EXHIBIT Q.

Before the Interstate Commerce Commission.

THE BOARD OF TRADE OF CHATTANOOGA
v.
THE EAST TENNESSEE, VIRGINIA & GEORGIA RAILWAY COMPANY; The Norfolk & Western Railroad Company; The Old Dominion Steamship Company; The Western & Atlantic Railroad Company; The Central Railroad & Banking Company of Georgia; The Georgia Railroad Company; The Ocean Steamship Company of Savannah; The South Carolina Railway Company; The Clyde Steamship Company; The Cincinnati, New Orleans & Texas Pacific Railway Company; The Baltimore & Ohio Railroad Company; The Central Railroad Company of New Jersey; The Nashville, Chattanooga & St. Louis Railway Company; The Pennsylvania Railroad Company; The Pennsyvania Company; The New York, Lake Erie & Western Railroad Company; The *The* New York & New England Railroad Company, and The Delaware & Hudson Canal Company.

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Complaint filed April 9, 1890. Answers filed May 5 to June 20, 1890. Heard at Chattanooga, Tennessee, November 12, 1890. Briefs filed January 2 to January 20, 1891. Decided December 30, 1892.

1. Upon complaint alleging that rates on traffic from New York and other Atlantic seaboard points to Chattanooga are unreasonable and greater for the shorter distance to Chattanooga than for the longer distance over the same line in the same direction to Memphis and Nashville:

Held, that defendants are justified by the existence of water competition of controlling force in charging less on such traffic for the longer distance to Memphis, but that no such competition exists for such traffic to Nashville, and any greater charge for the transportation of like kind of property from said seaboard points for the shorter distance to Chattanooga than for the longer distance through Chattanooga to Nashville is in violation of the fourth section of the act to regulate commerce. Defendants ordered to cease and desist from making such greater charge to Chattanooga, with leave to file application for relief under the proviso clause of the fourth section within a specified time. Ga. R. R. Com. *v.* Clyde SS. Co. *et al.*, 4 Inters. Com. Rep., 120; 5 I. C. C. Rep., 324, cited and affirmed.

2. One transportation line cannot be said to meet the competition of another transportation line for the carrying trade of any particular locality, unless the latter line could and would perform the service alone if the former did not undertake it.

3. When great disparity exists between charges which are lower to competitive than to intermediate points much less remote, the

inference is irresistible that the lower rate must be unremunerative upon any theory, or else the larger rate gives an unwarranted return for the service rendered.

47 G. C. Connor, J. A. Moon and E. S. Daniels, for complainant.

W. M. Baxter, for the East Tennessee, Virginia & Georgia Railway Company.

A. Pope, for the Norfolk & Western Railroad Company and Old Dominion Steamship Company.

Lawton & Cunningham, for the Central Railroad & Banking Company of Georgia and the Ocean Steamship Company of Savannah.

Shepherd & Cist, for the Cincinnati, New Orleans & Texas Pacific Railway Company.

Clarke & Brown, for the Nashville, Chattanooga & St. Louis Railway Company.

Report and Opinion of the Commission.

KNAPP, *Commissioner:*

The complainant, an association of merchants and manufacturers of the city of Chattanooga, Tennessee, incorporated under the laws of that State in the name of "The Board of Trade of Chattanooga," alleges that its objects, among others, are "to study the workings of our" (the Chattanooga's) "system of transportation, upon which our" (Chattanooga's) "commercial prosperity depends so largely, and to endeavor to remedy, by all proper means, the defects and abuses existing therein;" and that the defendants, as common carriers engaged in interstate commerce, "separately and jointly, have been and are now transporting property and participating in through rates of freight charges for transporting the same," from Boston, New York, Philadelphia and Baltimore, designated as eastern seaboard points, to Nashville, Memphis and Chattanooga, in the State of Tennessee.

The complaint charges in substance:

1. That the through rates to Chattanooga participated in by the defendants are unjust and unreasonable in themselves (as well as relatively to those to Nashville and Memphis), and therefore in violation of section 1 of the act to regulate commerce.

2. That Nashville, Memphis and Chattanooga compete for business in the same territory; that the through rates so charged and participated in by defendants are much lower to Nashville and Memphis than to Chattanooga "for transporting like property from said seaboard points under the same, or substantially the same
48 circumstances and conditions;" and that the defendants are thus guilty of unjust discrimination against Chattanooga, in violation of section 2 of the act to regulate commerce, and of giving an undue preference or advantage to Nashville and Memphis and subjecting Chattanooga to an undue prejudice or disadvantage in violation of section 3 of said act.

3. That the defendants are guilty of a violation of section 4 of

the act to regulate commerce, in that under said through rates they charge and receive a greater compensation for the transportation of the "like kind of property, under substantially similar circumstances and conditions" from said eastern seaboard cities to Chattanooga than they charge and receive for such transportation over their several lines through Chattanooga to Nashville and Memphis, which latter cities are respectively 151 miles and 310 miles farther from said eastern seaboard points.

In proof of these allegations, complainant refers to the tariffs on file with the Interstate Commerce Commission, and gives tables illustrating the alleged discriminating and otherwise illegal character of said rates.

The prayer of the complainant is, that, after hearing and investigation by this commission on due notice, "an order be made commanding the defendants to cease and desist from said violations of the act to regulate commerce, and that said order require them to transport property to Chattanooga from eastern seaboard points at such rates as this commission may decide to be just and reasonable," and "to cease transporting property from eastern seaboard points to the cities of Nashville and Memphis at lower rates of freight charges than they charge and collect for transporting like property to the city of Chattanooga; and for such other and further order as the commission may deem necessary to grant relief to the merchants and manufacturers of Chattanooga."

All of the defendants filed answers to the complaint except The Pennsylvania Company, The Old Dominion Steamship Company and The Clyde Steamship Company.

Some of these answers put in issue the allegation of complainant that Nashville, Memphis and Chattanooga compete for business in the same territory, and the answer of the Norfolk & Western Railroad Company sets up that "there are natural causes between Nashville and Chattanooga, or between Cincinnati and Chattanooga, in the shape of ranges of mountains and streams that divide the territories naturally and, as a consequence, commercially, that absolutely prevent, under any reasonable conditions, a growth
49 of trade to any extent northward from Chattanooga in the direction of Nashville for any considerable distance along the line of the Nashville, Chattanooga & St. Louis railway, or northward in the direction of Cincinnati along the line of the Cincinnati Southern railway; that the character of the productions of the territories named, the interdependence of the communities in said sections one upon another, and in their relations towards the larger markets that lie in the direction of Ohio, Kentucky or Indiana, as well as the community of interest between the cities of Nashville or Cincinnati and the towns along the respective lines of railway named, are sufficient to determine or control the trade of said communities toward said cities or others adjacent thereto." This answer also contains the following statement: "The adjustment of rates between eastern cities and Chattanooga in a uniform measure with those for all important points in interior Alabama and Georgia, was because of the necessity that existed, commencing

in 1868, for harmonizing the various commercial interests of said towns and cities, and, as the result of such effort, a system of rate adjustment was indicated in 1874, under the auspices of an association then formed, called the Southern Railway & Steamship Association, which, first embracing the cities of Atlanta, Chattanooga, Montgomery, Selma and Rome, became enlarged in its area as other railway lines were built and as the freight interests of other towns interested became enlarged. The cities or towns taking rates uniform with Chattanooga at this time are, Anniston, Ala., Athens, Ga., Atlanta, Ga., Birmingham, Ala., Cedartown, Ga., Columbus, Ga., Dalton, Ga., Montgomery, Ala., Eufaula, Ala., Rome, Ga., Selma, Ala., Meridian, Miss., Opelika, Ala., Talladega, Ala., and possibly others. The natural conditions that exist, as well as the transportation facilities that are enjoyed by each of these towns, make them more or less competitive with each other, and a large portion of them competitive with Chattanooga, those more particularly competitive with Chattanooga being Anniston, Ala., Atlanta, Ga., Birmingham, Ala., Rome, Ga., and Dalton, Ga., and taking New York as a representative point, the rates to said points are as have been named by the complainants, viz., $1.14, $.98, $.86, $.73, $.60 and $.49, for the six figured classes of merchandise traffic; and your respondent believes that the competition for business and the interchange of traffic one town with another or one territory with another, in which Chattanooga is most largely if not wholly interested, is with the towns named or with the territories that said towns likewise reach, and that it is in reference to rate adjustment in connection with these towns that the efforts of the complainants should be directed."

It is expressly admitted in most of the answers, and not denied in any, that the through rates from said eastern seaboard cities are higher to Chattanooga than to Nashville and Memphis; but it is claimed that this is not in violation of any of the provisions of the act to regulate commerce, because it is alleged the rates to Nashville and Memphis are forced upon the defendants by actual water competition of controlling force at both said points, and the transportation thereto from said eastern seaboard cities is not under substantially similar circumstances and conditions as that to Chattanooga. It is further denied that the rates to Chattanooga are unjust and unreasonable in themselves.

The East Tennessee, Virginia & Georgia Railway Company, the Norfolk & Western railroad, the Central Railroad & Banking Company of Georgia and the Ocean Steamship Company of Savannah, allege that among other circumstances which justify them in charging less rates for the longer haul through Chattanooga to Memphis and Nashville than are charged to Chattanooga, is the fact that, while the transportation is through Chattanooga the rates to Memphis and Nashville from said seaboard points are made through Cincinnati. It is also claimed by some of the defendants that the through rates to Memphis and Nashville are not made under a joint prorating arrangement, but are made by adding the regular tariff rate under the official (or trunk-line) classification to Cincin-

nati to the rates of the railroads south of that point, and that for said last-named rates said roads south of Cincinnati are alone responsible.

On the part of the Nashville, Chattanooga & St. Louis Railway Company it is alleged that said company "neither owns nor operates any railroad running into Chattanooga except the one from Nashville," and said company denies that it has anything to do "in fixing the rates or participating therein on freight shipped from any of the named points to Chattanooga," but it admits "that it takes freight destined for Nashville of its codefendants at Chattanooga from said named points at through rates and participates therein with its codefendants."

The New York, Lake Erie & Western Railway Company alleges "that the freight and traffic sent by it go direct to Memphis and Nashville via Louisville, and do not pass through Chatta-
51 nooga, and, therefore, that the Board of Trade of Chattanooga has no legal ground of complaint against it under the act to regulate commerce, as it has no control whatever of the rates to Chattanooga."

The Cincinnati, New Orleans & Texas Pacific Railway Company avers that it is operating as lessee thereof the Cincinnati Southern railway, extending from Cincinnati to Chattanooga, and "that the city of Nashville is not on the defendant's line of railway and that it does not operate or control any part of any through route from said eastern seaboard points to Nashville."

The Central Railroad Company of New Jersey denies "that it makes through rates from any seaboard points named in the complaint to Chattanooga, Memphis and Nashville."

Facts.

1. The complainant is an association of merchants and manufacturers of the city of Chattanooga, Tennessee, incorporated under the laws of that State for the purposes named in the complaint, and the defendants, The East Tennessee, Virginia & Georgia Railway Company, The Norfolk & Western Railroad Company, The Old Dominion Steamship Company, The Western & Atlantic Railroad Company, The Central Railroad & Banking Company of Georgia, The Georgia Railroad Company, The Ocean Steamship Company of Savannah, The South Carolina Railway Company, The Clyde Steamship Company, The Cincinnati, New Orleans & Texas Pacific Railway Company (as lessee of the Cincinnati Southern), The Baltimore & Ohio Railroad Company, The Delaware & Hudson Canal Company, The Pennsylvania Company, The Pennsylvania Railroad Company, The New York, Lake Erie & Western Railroad Company, The New York & New England Railroad Company, and The Nashville, Chattanooga & St. Louis Railway Company, are severally common carriers engaged in interstate commerce as parts of through lines and under joint tariffs of rates to Chattanooga, Nashville and Memphis, Tennessee. There is no proof controverting the denial

of the Central Railroad Company of New Jersey that it is so engaged.

2. The following are the through rates from New York and Boston to Chattanooga, Nashville and Memphis, respectively:

Classes	1	2	3	4	5	6
To Chattanooga	114	98	86	73	60	49
To Memphis, 310 miles farther	100	85	65	45	38	35
To Nashville, 151 miles farther	91	78	60	42	36	31

52 It thus appears that the rates from New York and Boston are less to Nashville than to Chattanooga, on the six *hundred* classes respectively, by 23 cents, 20 cents, 26 cents, 31 cents, 24 cents and 18 cents; and less to Memphis than to Chattanooga by 14 cents, 13 cents, 21 cents, 28 cents, 22 cents and 14 cents. These differences prevail in favor of Nashville and Memphis on all goods transported to those cities from eastern seaboard points through Chattanooga—the distance to Nashville being 151 miles, and to Memphis 310 miles, further than to Chattanooga.

3. There are a number of routes by which traffic from the eastern seaboard is carried to Nashville. These may be separated into two classes or groups; one consisting of the lines passing through Chattanooga, the other of the lines passing through Cincinnati, Louisville, Evansville and possibly other points north of Chattanooga. How the aggregate through business to Nashville is divided between these different groups was not very definitely shown, but it is fairly inferable from the evidence that the lines through Chattanooga carry fifty to sixty per cent. of the total tonnage. There was considerable disagreement as to whether the through rate to Nashville (with reference to the routes via Cincinnati, Louisville, etc.) is prorated on the whole mileage, or made up by adding certain arbitrary amounts to the "trunk-line" rates from the East to these intermediate points respectively.

The rates from New York and Boston to Cincinnati are:

1	2	3	4	5	6
65	57	44	30	26	22

From the same points to Louisville the rates are:

1	2	3	4	5	6
75	65	50	35	30	25

And to Evansville:

1	2	3	4	5	6
83	72	55	39	33	28

The above charges are imposed for carrying the traffic to these towns respectively, whether the transportation terminates there or is continued to Nashville; in other words the lines east of these

points receive the same compensation in either case. The
53 through rate to Nashville, hereinbefore stated, is less than the local rates from these several places plus the trunk-line rates from the seaboard to each of them respectively, that is, less than the amount produced by adding the locals from Cincinnati, Louisville or Evansville to the eastern rates severally applied to those towns. For this reason the Nashville rate may be said to be made by "arbitrary" additions to the trunk-line rates to the intermediate points. On the other hand, a comparison of these additions with the distances to Nashville from the several points mentioned shows that they give substantially the same rate per ton per mile in each case—one and seven-tenths cents—as the trunk-line rate per ton per mile east of those points. Practically, therefore, the Nashville rate by the several routes now under consideration is an extension of the trunk-line rate to that point, the total charge being divided between the several carriers in nearly exact proportion to the mileage operated by each. This being the material fact, the origin of the rate, or the proper name by which to describe it, can be of no importance. As any differences between the several routes in this group appear to be insignificant, their relation to the controversy will be sufficiently shown by taking one of them as an illustration, and accordingly the route via Cincinnati will be hereafter used for that purpose.

The following comparison shows the difference between the local rate from Cincinnati to Nashville and the amounts added to the trunk-line rate to the former place to make the through rate to the latter:

	1	2	3	4	5	6
Local rate, Cin. to Nash...	53	48	39	31	25	25
	1	2	3	4	5	6
Additions to trunk-line rate to Cincinnati.	26	21	16	12	10	9

The seaboard traffic which is carried to Nashville through Chattanooga reaches the latter place by several different routes. The most important of these appears to be the East Tennessee, Virginia & Georgia railway with its eastern connections by rail and water. The water portion of this route is by the vessels of the Old Dominion Steamship Company from New York to Norfolk, where they connect with the Norfolk & Western railroad which extends to
Bristol, Tennessee, the eastern terminus of the East Tennes-
54 see, Virginia and Georgia; the rail portion of this route consists of the Pennsylvania system, and possibly other lines, reaching Roanoke, Va., on the main line of the Norfolk & Western by way of the Shenandoah valley. All traffic over this route passes through Knoxville, Tenn., the rates to which point are about the same as to Memphis.

Another route is by the Clyde Steamship Company to Charleston, connecting at that port with rail lines running through Augusta and Atlanta; and a third route is by the Ocean Steamship Com-

pany to Savannah, and thence by rail through Macon and Atlanta. There is no testimony in the case indicating the relative portion of Nashville traffic via Chattanooga which passes by either of these routes, but our understanding is that the greater portion of it goes by the one first above described.

The traffic from Atlantic seaboard points to Memphis is also divided between several independent routes. One of these general routes is by the all-rail lines through Cincinnati, Louisville, Evansville, etc. The Memphis through rate is the trunk-line rate to Cincinnati, etc., plus certain additions which are less than the local rates from those points to Memphis. The difference between such local rates and these additions appears by the following statement:

	1	2	3	4	5	6
Local rate, Cin. to Memp.....	75	60	55	40	35	30
	1	2	3	4	5	6
Additions to trunk-line rate to Cincinnati.	35	28	21	15	12	13

A comparison of these additions with the distances from Cincinnati, etc., shows that the Memphis through rate, like the Nashville through rate, is in effect an extension of the trunk-line rate to Memphis, the total charge being divided between the different carriers in proportion to their respective mileage.

A second route is the one through Chattanooga, formed by the East Tennessee, Virginia & Georgia railway with its eastern connections, and requires no further description.

Two other routes are those already mentioned by way of Charleston and Savannah respectively. The Memphis traffic by the last-named routes does not necessarily go through Chattanooga, but may take a shorter course from Atlanta by way of Birmingham.

55 In addition to these is the ocean route to New Orleans, and thence to Memphis by rail or by the Mississippi river.

There are likewise several routes by which shipments terminating at Chattanooga reach their destination. A portion of this traffic goes by the trunk lines to Cincinnati, and thence by the Cincinnati Southern railroad, now controlled by the Cincinnati, New Orleans & Texas Pacific Company. The through rate by this route, as in the case of Nashville and Memphis, is made by adding to the trunk-line rates to Cincinnati certain amounts which represent the proportion of the total charge taken by the carrier from Cincinnati to Chattanooga. The additions so made give a considerably greater rate per ton per mile for this portion of the haul than the trunk-line rate east of Cincinnati, but they are at the same time materially less than the local rates between those points. The precise difference appears by the following statement:

	1	2	3	4	5	6
Local rates, Cin. to Chat.....	76	65	57	47	40	30
	1	2	3	4	5	6
Additions to trunk-line rates to Cin.....	49	41	42	43	34	27

Another portion of the Chattanooga traffic goes by the route formed by the lines of the East Tennessee, Virginia & Georgia railway and its eastern connections by rail and water hereinbefore mentioned. The other routes by which Chattanooga shipments reach their destination are those by water and rail through Charleston and Savannah respectively which have already been sufficiently described. The proportions of the through rate taken by the several lines operating the three routes last named are not disclosed by the record; nor is there any proof showing the relative amount of Chattanooga shipments by either of the routes mentioned. Our impression, however, is that the larger portion of this traffic goes by the Cincinnati route and by the route of the East Tennessee, Virginia & Georgia railway and its connecting lines.

There may be other routes or lines by which traffic from the Atlantic seaboard reaches Nashville, Memphis or Chattanooga, but the foregoing are those by which the great bulk of eastern shipments is carried to these several points, and the only ones which need to be considered in this investigation. The rates to each of these towns are the same by whatever route the transportation is effected, except the rate to Memphis via New Orleans.

56 Cincinnati, Louisville and Evansville have water communication with Nashville by the Ohio and Cumberland rivers, and also with Memphis by the Ohio and Mississippi rivers, but no traffic from the eastern seaboard by way of Cincinnati, etc., reaches Nashville or Memphis by these water routes.

4. As the matter of distance is of considerable importance in one aspect of this case, the following tables are given, which are believed to be substantially correct:

Distances Via Cincinnati, Louisville, and Evansville.

	Miles.
New York to Cincinnati	757
Cincinnati to Nashville	295
New York to Nashville	1,052
New York to Louisville	927
Louisville to Nashville	185
New York to Nashville	1,112
New York to Evansville	986
Evansville to Nashville	157
New York to Nashville	1,143
New York to Cincinnati	757
Cincinnati to Memphis	487
New York to Memphis	1,244

New York to Louisville	927
Louisville to Memphis	377
New York to Memphis	1,304
New York to Evansville	986
Evansville to Memphis	322
New York to Memphis	1,308
57 New York to Cincinnati	757
Cincinnati to Chattanooga	335
New York to Chattanooga	1,092

Distances Via Chattanooga, All Rail.

New York to Bristol	659
Bristol to Chattanooga	242
New York to Chattanooga	901
Chattanooga to Nashville	151
New York to Nashville	1,052
New York to Chattanooga	901
Chattanooga to Memphis	310
New York to Memphis	1,211

Distances Via Chattanooga, Part Water.

Norfolk to Bristol	408
Bristol to Chattanooga	242
Norfolk to Chattanooga	650
Chattanooga to Nashville	151
Norfolk to Nashville	801
Norfolk to Chattanooga	650
Chattanooga to Memphis	310
Norfolk to Memphis	960

(This does not include water distance from New York to Norfolk.)

Charleston to Chattanooga	448
Chattanooga to Nashville	151
Charleston to Nashville	599

58	Charleston to Chattanooga	448
	Chattanooga to Memphis	310
	Charleston to Memphis	758

(This does not include water distance — New York to Charleston.)

Savannah to Atlanta	295
Atlanta to Chattanooga	140
Savannah to Chattanooga	435
Chattanooga to Nashville	151
Savannah to Nashville	586
Savannah to Chattanooga	435
Chattanooga to Memphis	310
Savannah to Memphis	745

(This does not include water distance — New York to Savannah.)

The distance from New Orleans to Memphis by rail is 394 miles, and by river very much greater.

The distance from Cincinnati to Nashville by the Ohio and Cumberland rivers is about 617 miles.

5. The city of Chattanooga is in southeastern Tennessee on the river bearing the same name as the State. During the last ten years especially its growth has been extremely rapid, and it has become a manufacturing and commercial point of considerable importance. It competes for the trade of the surrounding country largely in the same territory as Nashville, and also to some extent in the same territory as Memphis. By reason of the disparity in charges on shipments from the east, in favor of Nashville and Memphis, Chattanooga is placed at serious disadvantage in this competition and its business materially lessened. The tendency of existing rates to these rival towns is to limit the area in which eastern merchandise can be profitably distributed from Chattanooga, and to impede the growth and prosperity of that city which would naturally result from the development of its wholesale trade.

59 Under the tariffs now in force goods may be carried from the east through Chattanooga to Nashville, and back through Chattanooga to points south and east, and there sold at lower prices than Chattanooga merchants can sell for; and this appears to have actually occurred in many instances. On a carload of first-class freight, 40,000 pounds, the charges to Chattanooga, at $1.14 per hundred, amount to $456.00; while to Nashville, at 91 cents, the charges are only $364.00, making a difference of $92.00 in favor of Nashville, the longer haul by 151 miles. On fourth-class freight the advantage in favor of Nashville is $124.00 per car, and on sixth class, $72.00. The advantage in favor of Memphis, a longer haul by 310 miles, is also large.

The proportion of the Nashville through rate charged on a ton of first-class goods from Cincinnati to Nashville via the Louisville & Nashville railroad, a distance of 295 miles, is $5.20, while the proportion of the Chattanooga through rate charged from Cincinnati to Chattanooga via the Cincinnati Southern railway, a distance of 335 miles (only 40 miles further), is $9.80.

It is quite unnecessary to multiply examples showing the differences resulting from these relative rates in the transportation charges on eastern merchandise to these several towns, as their necessary effect in limiting the distance to which distribution from Chattanooga can be profitably effected is sufficiently obvious without further illustration.

6. As appear from tariffs on file with the commission, the following cities and towns, among others, are grouped with Chattanooga and take the same rail and water rates on classified traffic, to wit: Dalton, Rome, Atlanta, Americus, Athens, Columbus, Fort Gaines, and Griffin, in the State of Georgia; Huntsville, Decatur, Sheffield, Tuscumbia, Florence, Gadsden, Oxford, Talladega, Anniston, Birmingham, Opelika, Montgomery, Selma, and Eufaula, in the State of Alabama; and Enterprise and Meridian, in the State of Mississippi. Of these, Dalton, Rome, Atlanta, Americus, Athens, Columbus, Griffin, Anniston, Gadsden, Oxford, Opelika, and Eufaula have higher all-rail class rates than Chattanooga—their all-rail rates on the six numbered classes being as follows:

1	2	3	4	5	6
122	104	91	77	63	51

The rates to Chattanooga and the above-named common points, both rail and water and all rail, are established by the Southern Railway & Steamship Association, of which the defendant
60 lines herein are members, and all traffic to those points is governed by the classification of that association. The traffic to Nashville and Memphis, however, irrespective of the route by which it is transported, is governed by the official or trunk-line classification. There may be some disadvantage to Chattanooga from this circumstance, since an article of a given class under the first-named system may be in a lower class under the other system, but the injury, if any, resulting from differences of that character is not believed to be serious.

The general range of rates in the territory covered by the Southern Railway & Steamship Association is material-y higher than in the territory of the Trunk Line Association, the difference resulting mainly from the much greater volume of traffic in the latter section; and it is inevitable that difficulties should exist and complaints arise along the line of division between varying systems of classification and unlike methode of tariff construction.

7. There are no through lines by water from Cincinnati to Nashville, but a few boats are run from Cincinnati to Paducah, Kentucky, and two or three a week, carrying from six to eight car-loads each, from Paducah to Nashville. Boats are unloaded and loaded again

at Paducah. No eastern business of any consequence is done, and these water lines have no agents to solicit eastern trade. Their traffic is from Ohio River points. The Atlantic seaboard shipments to Nashville by way of Cincinnati are carried wholly by rail.

The Lower Cumberland river, on which Nashville is situated, is navigable about nine months in the year, and boats run that number of months on an average. Many years ago, before the days of railroads, there were through lines of boats to Nashville from Cincinnati and other cities, but they have all been discontinued on account of the rates and facilities afforded by the railroads. The railroads have the advantage in time, insurance and handling. If goods were shipped from the east and sent by water from Cincinnati to Nashville, they would have to be unloaded from the cars and loaded in boats at Cincinnati and loading and unloading would also be necessary at Paducah. A through line of boats was established and kept up with difficulty for some time after the war, but was long ago abandoned. The uncertainty of return cargoes from Nashville would apparently prevent the maintenance of such a line of boats at the present time, even if secured against a reduction in rates by the railroads.

8. The lower rates accepted by the carriers engaged in the
61 transportation of eastern merchandise to Nashville via Chattanooga are not forced upon them by any water competition at the former place. In performing this service for the compensation fixed by the present tariffs, these carriers are not affected by the circumstance that water communication exists between Cincinnati and Nashville. The Nashville rate is independent of the lines operating through Chattanooga, and those lines have no voice in determining its amount. That rate is made by the all-rail carriers via Cincinnati, and their action is uncontrolled by the defendant lines. The competition which the latter meet at Nashville is distinctly the competition of the trunk lines and the Louisville and Nashville system whose northern termini are at points on the Ohio river which receive trunk-line rates on eastern shipments. The competitors of the defendants for this Nashville traffic, therefore, are the railroads from the Atlantic seaboard reaching Nashville by way of Cincinnati, etc., all of which are interstate carriers subject to the act to regulate commerce. These carriers established rates and united in joint tariffs from eastern points to Nashville long before the lines through Chattanooga engaged in the Nashville business. The acceptance of the rates so fixed by the rail lines via Cincinnati was the necessary condition upon which the lines via Chattanooga could compete for Nashville traffic.

As already stated, the through rate to Nashville by the Cincinnati route is made by certain additions to the trunk-line rate from the East to the latter point. The amount of such additions was doubtless fixed originally with reference to the water rates between those cities, and it may be that the possibilities of water carriage have some influence in maintaining the present figures. But we are far from satisfied, and refuse to find on the evidence in this case, that there is any actual water competition for traffic from Atlantic points

to Nashville, or that the Louisville and Nashville road is forced to take such traffic at the compensation now received by it, because of river communication between Cincinnati and Nashville furnishing the opportunity for such competition. The river rates between those places are now considerably lower than the rail rates, and more or less of the local traffic goes by water; but the through business from Atlantic cities, saving the time, distance and cost of breaking bulk at Cincinnati, would continue to go by rail, in our judgment, even if the disparity between land and water rates were materially greater than it is now. There might, of course, be such an advance in rail rates that shipments from the East would take the water
62 route from Cincinnati. What amount of difference would produce that result it is impossible to determine from the testimony; but we find that such difference might be substantially greater than it is at present without important effect upon the railroad tonnage from the East, and that the through rate to Nashville is in no sense controlled by water competition at that point, either actually encountered or seriously apprehended.

9. The situation is quite different with respect to Memphis. The defendant lines actually meet water competition at that point which is direct and to a large degree controlling. The heavy shipments from the Atlantic seaboard to Memphis go for the most part by way of New Orleans, and the carriers complained of in this proceeding make little effort to compete with the water lines on traffic of that description. At least a third of the entire volume of eastern merchandise appears to reach Memphis by ocean steamer to New Orleans, and thence by water or rail to destination. The differences between the rates on the several classes of freight from eastern cities over the routes through Chattanooga, and the rates by ocean to New Orleans and thence by the Mississippi river to Memphis, are shown by the following table:

By defendants' lines:

	1	2	3	4	5	6
	1.00	.85	.65	.45	.38	.35
By New Orleans and river	.65	.60	.45	.33	.28	.27
Differences	.35	.25	.20	.12	.10	.08

On shipments from New York to New Orleans by ocean, and thence by rail to Memphis, the rates now in force for the several classes are 83 cents, 75 cents, 57 cents, 40 cents, 34 cents and 32 cents; also the following commodity rates, viz: on bags, bagging, soda and coffee 32 cents; on boots and shoes, dry goods, carpets, clothing and notions 68 cents; and on cotton piece goods 52 cents.

There are two steamers per week of large capacity from New York to New Orleans, and three or four lines of boats ply the Mississippi at all seasons of the year between the latter place and Memphis. Large quantities of dry goods, staple groceries and other similar

articles, which at Memphis amount to a very large tonnage, reach the wholesale dealers of that city via New Orleans at the
63 rates above stated. The rail carriers from the East cannot meet these rates and do not control this class of business. Their participation in the traffic is mainly confined to the higher grades of freight, on which the advantages in time, insurance and other items compensate for the increased cost of transportation. It appears also that The East Tennessee, Virginia & Georgia Railway, and presumably the other defendants, have agreed with the steamship lines running to New Orleans, and their connecting carriers to Memphis, upon the present differentials in favor of the New Orleans route to that destination: and the fact of such an agreement to prevent ruinous rate cutting indicates with much force the existence and positive influence of water competition for the carrying trade to that town. The apparent effect of these differentials is to give to the water routes a large share of the heavy and bulky traffic, especially the coarser and cheaper goods of general consumption at all periods of the year, while the lines operated by the defendants transport the greater portion of the more valuable commodities embraced in the higher classes.

It is possible, also, that the obtainable rates on Memphis traffic are affected, in some measure at least, if not to a controlling degree, by the tariffs made and business secured by the rail lines reaching that point through Cincinnati. The action and influence of those lines have already been described in the findings relating to Nashville, and further statements in regard thereto can hardly be required in this connection. Indeed, there seems to be no occasion for reciting other facts bearing upon transportation charges to Memphis, because the still lower rates enjoyed by Nashville, and the greater proximity of that town to Chattanooga, present the leading issue in this investigation. An equitable adjustment of the relative rates applied to these two cities will, as it now appears, make any special consideration of the Memphis tariff practically unnecessary.

10. There is a conceded margin of profit in the rates now in force to Nashville and Memphis, with reference to the additional expense incurred in carrying eastern traffic to those destinations, but whether that margin affords reasonable compensation for the services thus rendered cannot be determined from the evidence.

Conclusions.

The situation which we have thus attempted to describe is one of peculiar difficulty. It is easy to perceive the disadvantages
64 which gave rise to this complaint, but the remedy that can be applied, with due regard to the rights of the carriers affected, is not readily discovered. The prejudice to which Chattanooga is subjected by reason of the lower rates of transportation to Nashville and Memphis is obvious and conceded, but how to avoid that result without unjust consequences to the defendants is an extremely obstinate problem. There are certain considerations,

however, bearing upon this question which indicate the direction in which a solution is to be sought.

In the findings of fact above set forth, we have stated that the rates accepted for carrying eastern traffic to Nashville through Chattanooga are not influenced by water competition at the terminal point, but that the sole competition for Nashville business from the Atlantic seaboard comes from the all-rail lines reaching the same destination by way of Cincinnati. We do not see how there can be actual competition between carriers except under circumstances where the traffic for which they compete would be taken by one of them if the other were not in the field; and such competition can be controlling at a given point only to the extent that either is in a position to do the entire business if the others were unable or unwilling to engage in it. One transportation line cannot be said to meet the competition of another transportation line for the carrying trade of any particular locality, unless the latter line could and would perform the service alone if the former did not undertake it. This being so, the defendants cannot maintain that there is water competition for the carriage of eastern merchandise to Nashville, because none of that traffic would reach its destination by water if the lines through Chattanooga withdrew or were excluded from the Nashville business. Plainly, in such event, all traffic from the East to that point would be carried over the rail routes via Cincinnati; the water lines on the Ohio and Cumberland rivers would not participate in it any more than they do at present. In other words, the real competitors of the defendants for this transportation are the all-rail carriers reaching Nashville by way of Cincinnati, and those carriers are confessedly amenable to the act to regulate commerce. If these views are correct they control, *prima facie* at least, the determination of this case, for the primary question involved has been recently decided by the commission.

In a series of proceedings instituted by the Georgia railroad commission, we have taken occasion to review with much care the fourth section of the statute, familiarly known as "the long
65 and short haul clause," and have given it a construction intended to have general application.

Ga. R. R. Com. *v.* Clyde Steamship Company *et al.*, 4 Inters. Com. Rep., 120; 5 I. C. C. Rep., 324.

The consideration which this feature of the law received in the cases here referred to, and the reasons advanced for the conclusions therein announced, will appear from an examination of the report of the commission in those cases, made public a few weeks ago, and need not be repeated in this opinion. The proposition which distinctly applies to the present proceeding was stated with conciseness in the following language:

"The carrier has the right to judge in the first instance whether it is justified in making the greater charge for the shorter distance under the fourth section in all cases where the circumstances and conditions arise wholly upon its own line or through competition for the same traffic with carriers not subject to regulation under

the act to regulate commerce. In other cases, under the fourth section, the circumstances and conditions are not presumptively dissimilar, and carriers must not charge less for the longer distance except upon the order of this commission."

This ruling is directly in point and conclusive upon the primary issue in this controversy, because the competitors of these defendants for the Nashville traffic in question are themselves interstate carriers by rail, and subject in all respects to the act to regulate commerce. It follows, therefore, that the carriers herein complained of which engage in the transportation of freight from the eastern seaboard to Nashville through Chattanooga, and publish and accept rates therefor which are lower than the rates maintained by them for like transportation to Chattanooga—a shorter haul included in the longer haul to Nashville—are acting in plain violation of the fourth section, and that the resulting discrimination against Chattanooga must be adjudged unlawful.

Upon the facts ascertained in this case and the interpretation of the statute to which we adhere, any other conclusion would be quite inconsistent. The construction placed upon the long and short haul clause in the Georgia cases was deliberately adopted, and its controlling application to the present controversy is not open to serious question. We must hold that the lower rates accorded by the defendants on shipments to Nashville are without warrant of law, and that the higher charges exacted on shipments to Chattanooga cannot be sanctioned in this proceeding.

66 In justice to the various parties in interest, however, it should be added that this disposition of the case is not intended to preclude the defendants from applying to the commission for relief from the restrictions imposed by the fourth section of the act, on the ground that the situation in which they are placed with reference to this Nashville traffic constitutes one of the "special cases" to which the proviso clause of that section should be applied.

It is stated in the foregoing findings that the present Nashville rate is prescribed by the rail lines reaching that point via Cincinnati, and that the defendant lines through Chattanooga have no voice or influence in determining its amount. These lines are under compulsion, therefore, to meet the rates which other carriers have established, or leave those carriers in undisturbed possession of the entire traffic. They have no alternative but to accept the measure of compensation dictated by independent rivals, or abandon the large percentage of Nashville business which they now secure. In addition to this, the geographical position of these two cities, the diverse character and divergent courses of the several groups of lines which connect them with the Atlantic seaboard, the varying systems of classifications by which they are severally affected, and the greater volume of traffic at the lower rates prevailing in the trunk-line territory, are existing conditions which govern, to some degree at least, the transportation in question. For these conditions the carriers complained of do not appear chiefly responsible, because the lower rate to Nashville is beyond their control, and the

allowance of the same rate to the shorter-distance point might reduce their revenues below the limits of fair compensation. Without in any sense prejudging the case, we hold that the defendants may invoke its consideration in an appropriate proceeding.

Any such intimation, however, should not be understood as covering an implied indorsement of the present disparity in rates as between Chattanooga and Nashville, for no such inference is intended. The suggestion here made goes no further than the propriety of an unprejudiced investigation, when permission to deviate from the general rule of the statute is applied for by these carriers on account of the special circumstances by which they are surrounded.

It seems improbable that the discrimination complained of can be made less oppressive by any increase in the Nashville
67 rate, and on that assumption the only practical relief is a reduction in rates to Chattanooga. We are aware of the difficulties attending a readjustment upon that basis, but we cannot regard them insuperable. On the contrary, we firmly believe that the eastern rate to this point can be materially reduced without injustice to the defendants and without serious disturbance to the general scheme of tariff construction with which that rate is connected. Compared with rates to other points and on other lines, for similar distances and a corresponding volume of traffic, the rate to Chattanooga seems extremely liberal, to say the least; while a strong presumption of its unreasonableness is created by the voluntary action of the defendants themselves in seeking business at decidedly lower rates to points much more remote. When these carriers, for instance, charge seventy-three cents per hundred pounds on fourth-class freight from New York to Chattanooga, and at the same time carry like shipments 150 miles further to Nashville for forty-two cents a hundred, and do this not incidentally but for a series of years, the belief that the higher rate is excessive becomes a positive conviction. We are familiar with the argument by which the policy of lower rates to competitive points is defended, and concede its conclusiveness in certain cases and within certain limits; but when the disparity between long and short distance charges reaches the proportions here exhibited, the inference is irresistible that the lesser rate must be unremunerative upon any theory, or else the larger rate gives an unwarranted return for the services rendered. As the commission has said in another case where a similar question was considered, "the difference between the figures is too great to permit the lower charge to be justified by the rule of expediency without condemning the higher charge by the rule of reasonable compensation."

We entertain little doubt, therefore, that equity between shipper and carrier requires some reduction in the rates now enforced on Chattanooga traffic from Atlantic points, and are convinced of the necessity for such a reduction to secure relative justice between that town and Nashville. We refrain from further statement of the reasons which have induced this conclusion, as the amount to which the Chattanooga rate should be reduced will not now be decided.

If the carriers engaged in Nashville transportation through Chattanooga act upon the suggestion above made, and apply for relief from the restrictive rule laid down in the fourth section, the subject can be more fully considered in disposing of that application; while, if such action is not taken by them within the time allowed for that purpose, it will be the duty of the commission to make a final order in this proceeding prohibiting higher charges on shipments to Chattanooga than are or may be accepted on like shipments to Nashville. In addition to this, it may be remarked that the complainant's case was presented on the theory that the prohibitive requirement of the statute should be strictly enforced against these defendants, while they in turn contended that the full difference now maintained between rates to Chattanooga and to Nashville was justified by the necessities of the situation. The question which may arise, if permission is sought to depart from the general rule relating to long and short hauls, was not specially discussed. On this ground, also, it would seem suitable to allow opportunity for a further hearing before fixing maximum rates on shipments to Chattanooga.

68

We deem it unnecessary to make any comment upon the rates in force at Memphis or give any directions in respect thereto, because, as stated in the findings, the fundamental question in this case arises between Chattanooga and Nashville, and an equitable adjustment of rates between those towns may obviate any separate consideration of the Memphis tariff.

These views lead to the following order:

For reasons stated in the foregoing opinion, it is adjudged unlawful for the defendants herein to make or accept rates on shipments from Atlantic seaboard points to Nashville through Chattanooga, which are lower than the rates made and enforced by them at the same time on like shipments to Chattanooga—a shorter distance included in the longer distance to Nashville. The defendants, therefore, are ordered and required to cease and desist from making, enforcing or receiving any higher rates for such transportation as aforesaid to Chattanooga than are or may be made or accepted by them at the same time for like transportation to Nashville.

To enable the defendants to apply for relief under the proviso clause of the fourth section of the act to regulate commerce, this order will be suspended until the first day of February, 1893; but the same will take effect and be in force from and after that date unless such application be made prior thereto. In case such relief shall be applied for within the time mentioned, the question of further suspending this order until the hearing and determination of such application will be duly considered.

In this report and opinion all the commissioners concur.

69 EXHIBIT R.

At a session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 30th day of December, A. D. 1892.

Present: Hon. William R. Morrison, chairman; Hon. Wheelock G. Veazey, Hon. Martin A. Knapp, Hon. James W. McDill, Hon. Judson C. Clements, commissioners.

THE BOARD OF TRADE OF CHATTANOOGA
vs.
THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILWAY COMPANY, The Norfolk and Western Railroad Company, The Old Dominion Steamship Company, The Western and Atlantic Railroad Company, The Central Railroad and Banking Company of Georgia, The Georgia Railroad Company, The Ocean Steamship Company of Savannah, The South Carolina Railway Company, The Clyde Steamship Company, The Cincinnati, New Orleans and Texas Pacific Railway Company, The Baltimore and Ohio Railroad Company, The Central Railroad Company of New Jersey, The Nashville, Chattanooga and St. Louis Railway Company, The Pennsylvania Railroad Company, The Pennsylvania Company, The New York, Lake Erie and Western Railroad Company, The New York and New England Railroad Company, and The Delaware and Hudson Canal Company.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and the commission having, on the date hereof, made and filed a report and opinion containing its findings of fact and conclusions thereon, which said report and opinion is hereby referred to and made a part of this order, and the commission having, as appears by
70 said report and opinion, found and decided, among other things, that such of the defendants herein as are engaged in the transportation of property from New York and other Atlantic seaboard cities to Chattanooga or through Chattanooga to Nashville, both in the State of Tennessee, have, by charging and receiving more for the transportation of like kind of property from New York, Boston, Philadelphia, Baltimore, and other Atlantic seaboard cities for the shorter distance to Chattanooga than for the longer distance over the same lines in the same direction to Nashville, violated the provisions of the act to regulate commerce.

It is ordered and adjudged that the defendants, The East Tennessee, Virginia and Georgia Railway Company; The Norfolk and Western Railroad Company; The Old Dominion Steamship Company; The Western and Atlantic Railroad Company; The Central Railroad and Banking Company of Georgia; The Georgia Railroad Company; The Ocean Steamship Company of Savannah; The South Carolina Railway Company; The Clyde Steamship Company; The Cincinnati, New Orleans and Texas Pacific Railway Company; The Baltimore and

Ohio Railroad Company; The Central Railroad Company of New Jersey; The Nashville, Chattanooga and St. Louis Railway Company; The Pennsylvania Railroad Company; The Pennsylvania Company; The New York, Lake Erie and Western Railroad Company; The New York and New England Railroad Company, and The Delaware and Hudson Canal Company, or such of them as are or may be engaged in the transportation of property from New York and other Atlantic seaboard points to Chattanooga or through Chattanooga to Nashville, in the State of Tennessee, be and they severally are hereby required to cease and desist from charging or receiving any greater compensation in the aggregate for the transportation of like kind of property from New York, Boston, Philadelphia, Baltimore, or other Atlantic seaboard cities for the shorter distance to Chattanooga than for the longer distance over the same line in the same direction to Nashville. That for the purpose of enabling said defendants to apply to the commission for relief under the proviso clause of the fourth section of the act to regulate commerce, this order is hereby suspended until the first day of February, 1893; but the same will take effect and be in force from and after that date unless such application be made prior thereto. In case such relief shall be applied for within the time mentioned the question of further suspending this order until the hearing and determination of such application will be duly considered.

71 And it is further ordered that a notice embodying this order be forthwith sent to each of the defendant corporations, together with a copy of the report and opinion of the commission herein, in conformity with the provisions of the fifteenth section of the act to regulate commerce.

Office of the Interstate Commerce Commission.

WASHINGTON, D. C.

I, Edw. A. Moseley, secretary of the Interstate Commerce Commission, hereby certify that the foregoing exhibits, seventeen in number, and marked A to R, both inclusive, are correct copies of the originals thereof on file among the records of the Interstate Commerce Commission.

In testimony whereof I hereunto set my hand and affix the seal of the said Interstate Commerce Commission, at the city of Washington, in the District of Columbia, this 6th of March, 1893.

[L. S.] EDW. A. MOSELEY,
Secretary of the Interstate Commerce Commission.

A true copy of the petition and exhibits.

____ ____,
Secretary of the Interstate Commerce Commission.

(Endorsed:) Filed 1893, Mar. 24. Henry O. Ewing, deputy clerk.

And on the same day, to wit, the 24th day of March, 1893, an entry was made upon the journal of said court, which said entry is clothed in the words and figures following, to wit:

Journal "C," page 365, March 24th, 1893.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILWAY Company *et al.* } No. 384.

Came H. M. Wiltse, assistant district attorney of the United States, and presented the petition of the Interstate Commerce Commission against the defendants, and asked leave to file the same and the application was granted. And it appearing from said petition that pursuant to law upon complaint of the Board of Trade of Chattanooga, Tennessee, the commission aforesaid investigated charges against the defendants for violations of the interstate-commerce laws, and upon investigation defendants were found guilty of violations of said laws, and were ordered and notified to desist from said violations, but the order was suspended until the first day of February, 1893, but was to take effect and be in force from and after that date unless the order should be changed upon application of defendants, and it being alleged that said order remains in full force and effect, and has not been complied with, but has been disregarded,

72

It is therefore ordered that a subpœna issue requiring the defendants and each of them to appear before this court when sitting in Chattanooga aforesaid on the second Monday of April, 1893, and let such subpœna and a copy of this order and the petition be served on the defendants and let them then and there show cause why an injunction shall not issue as prayed for. Let process as to defendants outside of this district be sent to the marshal of the district in which the chief office of the respective defendants *are* situated and be served upon the chief officer to be found by such marshal, at the defendants' chief office. If said defendants or any of them fail to appear and make defence to the petition after such service, within three days after the second Monday of April, next, the petition will be taken for confessed and heard *ex parte* as to them.

And afterwards, to wit, on the 10th day of April, 1893, the answer of the C., N. O. & T. P. R'y Co. was filed in said court, which said answer is clothed in the words and figures following, to wit:

Answer, C., N. O. & T. P. R'y Co.

(Endorsed:) Filed Apr. 10, 1893. Henry O. Ewing, Deputy Clerk.

Circuit Court of the United States, Eastern District of Tennessee, Southern Division.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE EAST TENNESSEE, VIRGINIA & GEORGIA Railway Company and Others.
} In Equity. No. 384.

Separate answer of the Cincinnati, New Orleans & Texas Pacific Railway Company.

73 This defendant, answering for itself and not for any other of the defendants herein, says that it admits that it is a corporation created, chartered and existing under and by virtue of the laws of the State of Ohio and having its principal office at Cincinnati in said State, and it says that it has no knowledge as to the corporate existence and character of the several companies made defendants to this proceeding other than itself, and therefore demands strict proof thereof.

2. Defendant says that it is a common carrier operating, as lessee thereof, a railway, known as the Cincinnati Southern Railway, extending from the city of Cincinnati, in the State of Ohio, through the States of Kentucky and Tennessee, to the city of Chattanooga, Tennessee.

Defendant admits that it is a common carrier and is concerned in the transportation of passengers and property by railroad and water from seaboard points in the States of Massachusetts, New York, Pennsylvania and Maryland to points in the State of Tennessee in the capacity of an intermediate connecting carrier over its line of railway above described.

4. Defendant admits that it is, conjointly with the defendants parties hereto, transporting property and participating in through rates of freight charges therefor from the points designated as eastern seaboard points, viz: Boston, New York, Philadelphia and Baltimore, to the cities of Memphis and Chattanooga, Tenn., but not to the city of Nashville, Tenn.; but that the city of Nashville, Tenn., is not on defendant's line of railway, nor does defendant operate or control any part of any through route from the aforesaid eastern seaboard points to said Nashville. Defendant admits that the through rates aforesaid are lower for the transportation of like property from said eastern seaboard points to the city of Memphis than to the city of Chattanooga, but it denies that the circumstances are the same or substantially the same under which said transportation to said cities is conducted.

5. Defendant admits that it participates in the transportation of property shipped at eastern seaboard points to the cities of Memphis and Chattanooga and that such property is in a few instances trans-

ported through the city of Chattanooga to the city of Memphis, but it says that the charges for transporting said property, so far as its participation therein is concerned, is determined and controlled by the fact that between Cincinnati, Ohio, at which point defendant's connection with such transportation begins, and the said city
74 of Memphis, Tenn., there extends a water route, along the Ohio and Mississippi rivers, over which, at all seasons of the year, the business of transporting such property is carried on by a relatively cheap and inexpensive method, which fixes the rate which must be accepted by all railroads doing business between said Cincinnati and Memphis, which said rates are much below what would be a fair and reasonable compensation for such services by rail, and if applied to points not favored by nature with water routes, would prove ruinously inadequate to the cost of the service performed.

6. Defendant says that the rates from said eastern seaboard points to said Chattanooga are not unreasonable and unjust in themselves and do not subject said city of Chattanooga to any undue or unreasonable prejudice or disadvantage.

THE CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY COMPANY,
By JUDSON HARMON AND
LEWIS SHEPHERD, *Its Attorneys.*

STATE OF OHIO, *Hamilton County,* } *ss:*

Before me, Charles M. Cist, a notary public in and for said county and State, personally appeared S. M. Felton, president of The Cincinnati, New Orleans and Texas Pacific Railway Company, one of the defendants in the above case, who, being duly sworn, deposes and says that the facts set forth in the foregoing answer are true as he verily believes.

S. M. FELTON, *President.*

Sworn to and subscribed in my presence this 7th day of April, 1893.

[SEAL.]

CHARLES M. CIST,
Notary Public, Hamilton Co., Ohio.

And on the same day, to wit, the 10th day of April, 1893, an entry was made upon the journal of said court, which said entry is clothed in the words and figures following, to wit:

75 Journal "C," page 411.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE EAST TENN., VA. & GA. R'Y CO. ET AL.

In this cause by consent it is ordered that each of the def'ts served with notice be allowed until 1st Monday in May next to make de-

fence, and that on the hearing of this cause either party may use such parts of the testimony taken before the Interstate Commerce Commission as may be desired, without retaking the same.

And afterwards, to wit, on the 24th day of April, 1893, a certain plea was filed by the Delaware and Hudson Canal Company; which said plea is clothed in the words and figures following, to wit:

Plea of the Delaware & Hudson Canal Company.

(Endorsed:) Filed April 24, 1893. Henry O. Ewing, Deputy Clerk.

In the Circuit Court of the United States for the Eastern District of Tennessee.

THE INTERSTATE COMMERCE COMMISSION *vs.* THE EAST TENNESSEE, VIRGINIA AND GEORGIA Railway Company and The Delaware and Hudson Canal Company, Impleaded with Others.	In Equity. No. 384.

The plea of the defendant, The President, Managers and Company of the Delaware and Hudson Canal Company, impleaded as the Delaware and Hudson Canal Company, to the petition of the above-named petitioner, this defendant appearing solely for the purpose of filing this plea to the jurisdiction of this court.

76 The defendant, The President, Managers and Company of the Delaware and Hudson Canal Company, by protestation, not confessing or acknowledging all or any part of the matters and things in the said petition mentioned to be true in such manner and form as the same are therein set forth and alleged, does plead thereto, and for plea says that—

At the time of the beginning of this suit, this defendant was and still is a corporation duly incorporated and existing under and by virtue of the statutes of the State of New York and of no other State; and this defendant then was not and is not now an inhabitant of the eastern district of Tennessee.

At the time of the beginning of this suit and ever since, this defendant was and still is located and had and still has its principal office in the city, county and State of New York, and not elsewhere, and then had and now has no office whatsoever within the eastern district of Tennessee. No violation or disobedience upon the part of this defendant of the order or requirement in that behalf alleged in the petition or of any order or requirement whatsoever of the petitioner has ever happened within the eastern district of Tennessee.

This honorable court is, therefore, without jurisdiction either of the person of this defendant or of the subject-matter set forth in the petition herein, so far as the same relates to this defendant.

All which matters and things this defendant avers to be true and pleads the same to the said petition and humbly craves the judgment of this honorable court whether it ought to be compelled to make any further or other answer to the said bill.

THE PRESIDENT, MANAGERS AND COMPANY OF THE DELAWARE AND HUDSON CANAL COMPANY,

[SEAL.] By R. M. OLIPHANT, *President.*

LEWIS SHEPHERD,

Solicitor and of Counsel for Defendant, The President, Managers and Company of the Delaware and Hudson Canal Company.

I hereby certify that the foregoing plea is in my opinion well founded in point of law.

Chattanooga, April 24, 1893.

B. H. BRISTOW.
LEWIS SHEPHERD.

77 UNITED STATES OF AMERICA, *Southern District of New York,* } ss:

R. M. Oliphant, being duly sworn, says that he is the president of the above-named defendant, The President, Managers and Company of the Delaware and Hudson Canal Company, and that the above plea is true in point of fact, and is not interposed for delay.

R. M. OLIPHANT.

Sworn to before me, this 19th day of April, 1893.

[SEAL.] LIVINGSTON CROSBY,
Notary Public, N. Y. County.

And afterwards, to wit, on the 4th day of May, 1893, the answer of the E. T., V. & Ga. R'y Co. was filed in said cause, which said answer is clothed in the words and figures following, to wit:

Answer E. T., V. & Ga. R'y Co.

(Endorsed:) Filed 4 Day of May, 1893. Henry O. Ewing, Deputy Clerk.

Answer of the East Tennessee, Virginia & Georgia Railway Company to the bill of complaint filed in the circuit court of the United States for the eastern district of Tennessee, at Chattanooga, Tennessee, it being No. 384 on the equity docket, in the case of the Interstate Commerce Commission against said defendant and others.

I.

Respondent admits that it operated and did business as a common carrier by the name and style as above stated, as the successor in business of the East Tennessee, Virginia & Georgia Railroad Com-

pany, which was a charter created and existed under and by virtue of the laws of the State of Tennessee; and that it had its principal office at Knoxville, in said State.

Respondent believes it to be true that the allegations of the bill touching the incorporation of the other defendants to the bill are as stated therein, but do- not admit the same, as it has no definite knowledge thereof save public rumor and the averments in said bill contained, and where the same may be material to the rights of this respondent, the complainant is held to plenary proof in regard thereto. Neither does this respondent know, save as above recited, what acts or omissions were done by either of the other said
78 defendants as recited in the bill, which are claimed to have been in violation of law, and the complainant will be held to plenary proof of the same.

Respondent, answering for itself, says that on the 9th day of April, 1890, and up to the 24th day of June, 1892, it was as a common carrier engaged in the transportation of persons and property from Bristol, Tennessee, to Chattanooga, and westward to Memphis. On last-mentioned day, upon proper pleadings thereunto had, this honorable court, sitting in equity at Knoxville, Tennessee, appointed Charles M. McGhee and Henry Fink as receivers of the property of this defendant on the petition of Samuel Thomas, in case No. — in equity, and afterwards in two cases numbered, respectively, Nos. — and —, filed by the Central Trust Company of New York, extension orders were granted by virtue of all which all the franchises, properties and assets of this defendant were taken from it, and placed into the care and keeping of said receivers, who have since said date been in actual charge and operation of said properties as common carriers, and this defendant has had no possession nor connection therewith.

Respondent denies that there was, on the 9th day of April, 1890, or is now, any common control, management or arrangement between this respondent and any of its codefendants for the continuous carriage or shipment by its or other railroads or lines and steamers beyond what is usual and necessary in the handling of freights and passengers, by means of through tickets and bills-lading. As to whether any such common control, management or arrangement exists between any of the other defendants to the petition, respondent has no information, knowledge or belief.

II.

Respondent admits that on or about April 9th, 1890, an association styling itself the Board of Trade of Chattanooga, and claiming to be a mercantile society duly incorporated under the laws of Tennessee, and claiming to have its principal office at Chattanooga, in said State, filed a petition before the Interstate Commerce Commission for an alleged violation on the part of this defendant and others of the provisions of the act to regulate commerce, and that Exhibit A to the petition filed in this case is a true copy of said petition, and respondent admits that a true copy of said petition was forwarded

to respondent; but this respondent is further informed and
79 believes that said petitioner has no longer any entity at law, but has become disorganized, disintegrated and has been absorbed by another and entirely different body which is attempting to use its former functions.

III.

This respondent is content to admit it to be true that Exhibits B, C, D, E, F, G, H, I, K, L, O and P to the petition filed in this case are true copies of the answers of the respective defendants, as alleged in the petition filed in this case.

IV.

Respondent admits it appeared before said commission by answer, and presumes the facts as to appearance by other defendants are correctly set forth in the recitals of the bill and exhibits thereto.

V.

This respondent denies that it was made to appear to the satisfaction of said commission at said alleged hearing that this respondent had violated any of the provisions of the act to regulate commerce in any respect whatever, either as alleged in the original petition or otherwise. This respondent insists that the conclusions *to* which the said commission arrived at were wrong, deductions from the evidence submitted to them and contrary to the law of the land. It further insists that there is much material evidence pertinent to the case which was not before said commission at said hearing, and which, when presented, would show more clearly that said conclusions were erroneous, null and void. Respondent further explicitly denies that it ever violated any of the provisions of said act, as it will fully prove at the hearing in this case.

Respondent further denies that said commission duly or legally determined the matters or things that were in controversy or at issue between said parties, even upon the evidence at that time adduced. On the contrary, respondent is advised and so insists that such determination of said matters and things as was made by said commission was erroneous, illegal and void.

VI.

Respondent denies that it has at any time been unmindful of its duty or of any lawful decision or determination of said commission, or that it has ever disregarded or set at naught any
80 lawful order or authority of said commission, or that it has ever willfully or knowingly or at all violated or disobeyed any lawful order of said commission.

VII.

This respondent admits that prior to April 9th, 1890, and up to the 24th day of June, 1892, it has participated in making and receiving lower rates for the transportation of property from Boston,

in the State of Massachusetts: New York, Philadelphia, Baltimore and other eastern seaboard cities through Chattanooga to Nashville than have been made and accepted by it and some of its codefendants during the same time for the transportation of like property from said cities to Chattanooga. Respondent admits that such property has been transported by the same steamships and over the same railroads in the same direction, and that the rates to Nashville from said eastern seaboard cities have been less than the rates from said eastern seaboard cities to Chattanooga, and that the distance via said steamships and railroads is less to Chattanooga than to Nashville, but notwithstanding said facts are true, respondent denies that it has been guilty of any violation of the 4th section of the act to regulate commerce, because it says that the transportation of such property from said eastern seaboard cities to Nashville has not been and is not conducted under "substantially similar circumstances and conditions" as the transportation of like property from said eastern seaboard cities via said steamships and railroads to Chattanooga, for the following reasons, namely:

a. There are certain steamships and sailing vessels which ply between said eastern seaboard cities and New Orleans, Louisiana, and certain steamships and barges which ply from New Orleans to Paducah, Kentucky, and beyond; and certain other steamboats which ply from Paducah to Nashville, Tennessee, thus forming lines of all-water transportation from said eastern seaboard cities to Nashville of material and controlling effect, and that rates of freight can be obtained by said lines of water transportation from said eastern seaboard cities to Nashville, which prevent the all-rail rates from said eastern seaboard cities to Nashville being materially increased above what they are at present, and stand as a continual check to any effort to raise the same.

b. Lines of steamships ply between said eastern seaboard cities and Newport News and Norfolk, Virginia; the Chesapeake
81 & Ohio railroad extends from Newport News to Cincinnati, Ohio, and Louisville, Kentucky; and the Norfolk & Western railroad extends from Norfolk to Norton, Kentucky, where it connects with the Louisville & Nashville railroad, which extends from Norton to Cincinnati and Louisville. That said last-mentioned steamship and railroads concede lower rates from said eastern seaboard cities to Cincinnati and Louisville, respectively, than can be obtained by any all-rail lines or any other known part-rail and part-water lines, and they concede such rates to Cincinnati and Louisville from said eastern seaboard cities as, added to prevailing rates from Cincinnati and Louisville to Nashville, render it impossible to materially increase the all-rail rates from said eastern seaboard cities to Nashville above the present rates, and constitute another uncontrollable check against the raise of the present rates to Nashville over the line of this defendant.

c. The New York Central and Erie railroad, the Pennsylvania railroad and the Baltimore & Ohio railroad, which are known as the trunk lines, and which extend from the said eastern seaboard cities to Cincinnati and Louisville, concede such rates from said

eastern seaboard cities to Cincinnati and Louisville, as added to prevailing rates from Cincinnati and Louisville, makes it impossible to materially increase the all-rail rates from said eastern seaboard cities to Nashville above what they now are, which is another effective check as against raising the rates over the lines of this respondent, unadjusted and uncontrolled by this respondent.

d. Certain steamboats ply between Cincinnati and Louisville on the one side, and Evansville, Indiana, and Paducah, Kentucky, and other points beyond, on the other side; and certain lines of steamboats ply from Paducah, Kentucky, to Nashville, Tennessee. There is also a line of boats plying between Evansville and Nashville direct, and such rates can be obtained by said steamboat lines from Cincinnati and Louisville on the one side to Nashville, on the other side as render it impossible to increase the all-rail rate from Cincinnati and Louisville on the one side to Nashville on the other side materially above what they are at present, which is another check not made by this defendant, nor can they be controlled by it.

Respondent avers that there are no regular lines of water transportation from said eastern seaboard cities to Chattanooga, and no competition by water between said eastern seaboard cities and Chattanooga, by means of which the said city of Chatta-
82 nooga is not a competitive point in the sense in which Nashville by her natural situation is. Respondent avers that the rates from said eastern seaboard cities to Chattanooga are the result of many competitive factors; have been arrived at by healthful competition between divers independent lines, the result of the current of commerce of many years standing; are entirely beyond the control or influence of this respondent; have never been complained of by any of the parties in interest, and are just and reasonable in and of themselves.

Respondent avers that said rates are just and reasonable as compared with the rates from said eastern seaboard cities to Atlanta and other cities located in the same section as Chattanooga.

Respondent further shows to the court that the railroad lines of the South differ from the trunk lines of the North so far as revenue is concerned in many particulars—notably in the fact that it is impossible to derive recompense for the service from their local work without charging for the same extraordinary prices. They are located in a sparsely settled country, where factories are few; where merchandise is not created; where mines are not widely distributed, and where agriculture has not been stimulated to the degree it has in the northern section; and where the whole country is more or less cut into and bisected by water navigation, which obtains more or less during the whole of the year. It will be found impossible to adjudicate what will be fair and reasonable upon the common carriers on the one hand and the people upon the other, not to keep in view those circumstances which are diverse from those of other sections of the United States. The same rules will not apply to all sections alike. Some trunk lines *it* may be able to carry local freight as cheaply as they do their through freight, because local freight is offered in such abundance as to create a sufficient

revenue for them. But on the line of this defendant, it shows to the court that it will be impossible to derive sufficient revenue for its maintenance from local freight without charging exorbitant prices for the same, and to enable it to carry its local freight such as to Chattanooga, as is involved in this case, at reasonable prices for those persons compelled to have transportation, it is compelled to rely upon the additional revenue obtainable through the through traffic. It does not depend primarily upon its through traffic as to Nashville as is complained of in this case, for its maintenance, because at the rates at which it is compelled to do that service for the prices obtainable, it would be utterly unable to maintain its
83 expense; but because local points such as Chattanooga and other cities are unable to furnish a sufficient amount of local freight to enjoy the whole of the service of this respondent, it is compelled to accept through freight at a less price by which means it is able to carry its local freight to Chattanooga and other points at a less rate than it otherwise would be enabled to do. In the hot competition both north and south of it, this respondent has done the most favorable work possible for its patrons at the present charges, the result of which has been that it was utterly unable to pay its fixed charges and expenses and pay anything as interest upon its investment. If this honorable court should hold that the charges to Chattanooga should be no higher than those to Nashville, it not only would be a loss of revenue to this respondent for that particular station but would change and disrupt the charges throughout the whole contiguous region as far east as Bristol, and southwest to Rome, Birmingham and Atlanta, and would be a direction to the receivers aforesaid, or any one who should operate the line of road, to do so at a dead cost and ruinous losses. To compel them to raise the rates of freight to Nashville would simply result in an order to this defendant, or to any one operating the lines of railway, to retire from that business and to lose the little revenue that it has eked out from that source, and to compel a rise in the charges upon freight destined to Chattanooga and all such places likewise involved.

The end sought by the petitioner to wit: that the Nashville merchants should be compelled to pay higher freight charges than they are now paying, could not be attained by any such adjudication of this court. The traffic would simply be deflected to the other lines of common carriers over which neither this defendant nor the honorable court has control.

Respondent avers that the rates from the said eastern seaboard cities to Chattanooga are the same as the rates from said eastern seaboard cities to Anniston, Alabama; Athens, Georgia; Atlanta, Georgia; Birmingham, Alabama; Cedartown, Georgia; Columbus, Georgia; Dalton, Georgia; Montgomery, Alabama; Eufaula, Alabama; Rome, Georgia; Selma, Alabama; Meridian, Mississippi; Opelika, Alabama; and Talladega, Alabama. It further shows that rates, dependent upon the same principle, obtain to Knoxville, to Morristown, to Jonesboro and to Bristol, and respondent insists that it would not be just and reasonable to reduce the rates from said

eastern seaboard cities to Chattanooga unless said rates were also reduced from said eastern seaboard cities to the other above-
84 mentioned cities; and none of said cities were represented before the Interstate Commerce Commission, nor are they before the court in this case, nor do they make any complaint in that behalf.

Respondent avers that the rates charged from said eastern seaboard cities to Chattanooga and to Nashville respectively do not constitute any unjust discrimination or undue preference in favor of Nashville as against Chattanooga. The rates from said eastern seaboard cities to Cincinnati, Louisville and Evansville are lower than from said eastern seaboard cities to Nashville upon freight transported from said eastern seaboard cities through Chattanooga to Nashville and thence to Cincinnati, Louisville and Evansville, the distance is less from said eastern seaboard cities via that route to Nashville than Cincinnati, Louisville and Evansville.

The rates from said eastern seaboard cities to Cincinnati, Louisville and Evansville are made by the trunk-line roads above referred to, which do not transport through Chattanooga and which therefore would not be subject to the operation of the 4th section of the act to regulate commerce so far as traffic passing from said eastern seaboard cities through Chattanooga to Ohio River points is concerned. It would therefore be unjust and unreasonable to force defendant to raise the rates from said eastern seaboard cities to Nashville via Chattanooga and thus increase the disadvantages under which Nashville labors as compared with cities located upon the Ohio river, unless the rates from said eastern seaboard cities to said cities upon the Ohio river were also raised.

Further answering, this respondent says that complaint is made that the merchants of Chattanooga meet the competitive trade by the merchants of Nashville in the region intermediate between the two cities. This respondent is advised that a very small portion of the trade of Chattanooga is involved in that region, and this respondent cannot be held responsible to do away with the natural advantages which one city may have over another. Whenever Nashville merchants attempt to sell goods north or west, or to the upper or lower Cumberland river, they meet active competition from the merchants of Cincinnati, Louisville, Evansville, and other Ohio River cities, including even St. Louis, Missouri. So also as this respondent believes, the Knoxville merchants extend their wholesale trade down to, over and beyond the region of Chattanoga and successfully compete with Chattanooga merchants in the region between Nashville and Chattanooga, although they are sub-
85 jected to more expense than are the merchants of Chattanooga. These matters of trade must be left to healthful competition among themselves, and cannot be adjusted by a common carrier.

Said trunk-line rates from said eastern seaboard cities to Cincinnati, Louisville and other Ohio — cities are made relative to the rates which obtain between said eastern seaboard cities and Chicago, and the rates which obtain between said eastern seaboard cities and

Chicago are controlled by the all-water line via the lakes, canals and the Hudson river, which extend from Chicago to New York. It would be practically impossible to increase the rates between said eastern seaboard cities and Cincinnati, Louisville and other Ohio River cities without increasing in the same proportion the rates from said eastern seaboard cities to Chicago, and said rates would be materially increased from said eastern seaboard cities to Chicago above the rates which obtain by the water line aforesaid.

This respondent objects to the effect of this competition upon the low rates of carriage of the traffic to Nashville as much as the petitioner could possibly do, and would be happy if the petitioner or this honorable court could find a way by which the Nashville merchants could be compelled to pay this respondent higher prices for that service, in which event they would be enabled to carry their local freight at lower rates, but they state that they have a line of railway which is well located, which is now being economically run under the orders of this honorable court, and which at present rates is utterly incapable of paying anything like a legal rate of interest upon the actual value of the property.

Respondent states that every allegation in the said bill not herein specifically admitted nor modified is expressly denied, and full proof is demanded of the same.

And now having fully answered, this respondent prays to be hence dismissed with reasonable costs in this case most unjustly incurred.

THE EAST TENNESSEE, VIRGINIA & GEORGIA RAILWAY CO.
W. A. HENDERSON, *Solicitor.*

And on the same day, to wit, the 4th day of May, A. D. 1893, the answer of the Pennsylvania R. R. was filed in the clerk's office of said court, which said answer is clothed in the words and figures following, to wit:

Answer of Pennsylvania R. R. Co.

(Endorsed:) Filed 4th Day of May, 1893. Henry O. Ewing, Deputy Clerk.

86 In the Circuit Court of the United States, Southern Division of the Eastern District of Tennessee.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE EAST TENNESSEE, VIRGINIA AND Georgia Railway Company, The Pennsylvania Railway Company, *et al.* } In Equity. No. 384.

The answer of the Pennsylvania Railroad Company to the petition filed in the above-stated case.

This defendant, appearing to the said petition under and pursuant to the order of your honorable court made on the twenty-fourth

day of March, 1893, served upon it in the city of Philadelphia on the first day of April, 1893, most respectfully, protesting, states that its principal office not being situate in the judicial district of the circuit court of the United States for the eastern district of Tennessee; nor the alleged violation or disobedience by it of the order of the Interstate Commerce Commission referred to in said petition, happening within the judicial district of the circuit court of the United States for the eastern district of Tennessee, the petitioner was not authorized under the act to regulate commerce as amended to file its petition as against this defendant in this court.

Wherefore, without more, this defendant prays that the said petition shall as to it be dismissed.

This defendant, likewise protesting against the said petition, excepts thereto because it says that said petition does not set out with sufficient certainty the charge or charges made against the said defendants, or against this defendant, nor the fact or facts relied on, and on which the same are founded; and further, in that the proceedings had and taken by and before the Interstate Commerce Commission are not well and sufficiently pleaded, nor pleaded according to their legal effect, nor so as to disclose with reasonable certainty what the said defendants, or this defendant, were or was required to do and observe thereunder.

Wherefore, without more, this defendant prays that said petition shall as to it be dismissed.

And this defendant, without conceding the jurisdiction of your honorable court, or waiving the foregoing plea, protests, ex-
87 ceptions, and prayers for dismissal of this petition as to this defendant, but expressly reserving to itself all rights, benefits, and advantages resulting therefrom as fully as if it had rested solely thereon, for answer to said petition saith:

1st. That the proportion of the through rate received by it for carriage over its line of the traffic which is the subject-matter of complaint, is just and reasonable, and, as it is advised, is not in violation of the act to regulate commerce.

2nd. This defendant avers that the conclusions of the said plaintiff commission were not justified by the law or the facts because, *inter alia*, of the character of the service and the facts and circumstances which are in large part set out and disclosed in the answers to the original complaint attached as exhibits to the petition filed in this case, and particularly exhibits marked C, D, E, F, I, K and M, and reference is hereby made to said exhibits with like force and effect as if the contents of said exhibits were in form or in substance herein fully set out and recited.

3rd. This defendant avers that the proportions of the rates received by it for such traffic were much less than this defendant is authorized by its charter grants to charge for the services rendered.

4th. This defendant is advised, and therefore avers, that the act entitled "An act to regulate commerce," does not authorize the commission, under such circumstances as were presented to it by the complaint and answers filed and by the evidence taken thereunder, to determine and find that rates such as were received by this de-

fendant under the circumstances as they were disclosed, were in violation of said act.

Wherefore, this defendant prays that the petition in this case may be dismissed as to it, not only for want of jurisdiction, and because of defective petition as hereinbefore prayed for, but also for lack of just foundation for relief in fact and in law.

Witness the corporate seal of said The Pennsylvania Railroad Company, hereto attached, duly attested, this seventh day of April, anno Domini, one thousand eight hundred and ninety-three.

THE PENNSYLVANIA RAILROAD COMPANY,
By FRANK THOMSON, *Vice-President.*

Attest: J. C. SIMS, *Secretary.*

And on the same day, to wit, on the 4th day of May, A. D. 1893, the answer of the N., C. & St. L. R'y Co., was filed in the
88 clerk's office of said court, which said answer is clothed in the words and figures following, to wit:

Answer of N., C. & St. L. R'y Co.

(Endorsed:) Filed 4th Day of May, 1893. Henry O. Ewing, Deputy Clerk.

The answer of the Nashville, Chattanooga & St. Louis railway to the bill of complaint filed in the circuit court of the United States for the eastern district of Tennessee, at Chattanooga, Tennessee, it being No. 384 on the equity docket in the case of The Interstate Commerce Commission *vs.* The East Tennessee, Virginia & Georgia Railway Company *et al.*, to which it is made a defendant.

I.

Respondent supposes it to be true that the East Tennessee, Virginia & Georgia Railway Company is a corporation created, chartered and existing under and by virtue of the laws of the State of Tennessee, and that it has its principal office at Knoxville in said State.

Respondent supposes it to be true that the Norfolk & Western Railroad Company is a corporation created, chartered and existing under and by virtue of the laws of the States of Virginia and West Virginia, and that it has its principal office at Roanoke, in the State of Virginia.

Respondent has no knowledge, information or belief, as to whether the Old Dominion Steamship Company is a corporation or not. Respondent's information is that the principal office of said company is at New York in the State of New York.

Respondent supposes it to be true that the Western & Atlantic Railroad Company was on April 9th, 1890, a corporation created, chartered and existing under and by virtue of the laws of the State of Georgia, and that it had its principal office at Atlanta in the State of Georgia.

Respondent supposes it to be true that the Central Railroad & Banking Company of Georgia is a corporation created, chartered and existing under and by virtue of the laws of the State of Georgia, and that it has its principal office at Savannah in said State.

Respondent is informed that there is no such corporation as the Georgia Railroad Company, but that the Louisville & Nashville Railroad Company and the Central Railroad & Banking Company of Georgia, as assignee of Wm. M. Wadley, lessee, operate a railroad from Atlanta to Augusta under the name of the Georgia Railroad Company, and the said assignees have at Augusta their principal office for the operation of the said railroad.

89 Respondent supposes it to be true that the Ocean Steamship Company of Savannah is a corporation created, chartered and existing under and by virtue of the laws of the State of Georgia, and that it has its principal office at Savannah in said State.

Respondent supposes it to be true that the South Carolina Railway Company is a corporation created, chartered and existing under and by virtue of the laws of the State of South Carolina, and that it has its principal office at Charleston in said State.

Respondent supposes it to be true that the Clyde Steamship Company is a corporation created, chartered and existing under and by virtue of the laws of the State of South Carolina, and that it has its principal office at Charleston in said State.

Respondent supposes it to be true that the Cincinnati, New Orleans & Texas Pacific Railway Company is a corporation created, chartered and existing under and by virtue of the laws of the State of Ohio, and that it has its principal office at Cincinnati in said State.

Respondent supposes it to be true that the Baltimore & Ohio Railroad Company is a corporation created, chartered and existing under and by virtue of the laws of the State of Maryland, and that it has its principal office at Baltimore in said State.

Respondent supposes it to be true that the Central Railroad Company of New Jersey, is a corporation created, chartered and existing under and by virtue of the laws of the State of New Jersey, and that it has its principal office at New York in the State of New York.

Respondent admits that it (respondent) is a co-poration created, chartered and existing under and by virtue of the laws of the State of Tennessee, and that it has its principal office at Nashville in the State of Tennessee. It has never been incorporated in Alabama, Georgia or Kentucky.

Respondent supposes it to be true that the Pennsylvania Railroad Company is a corporation created, chartered and existing under and by virtue of the laws of the State of Pennsylvania, and that it has its principal office at Philadelphia in said State.

Respondent supposes it to be true that the Pennsylvania Company is a corporation created, chartered and existing under and by virtue of the laws of the State of Pennsylvania, and that it has its principal office at Pittsburgh in said State.

Respondent supposes it to be true that the New York, Lake Erie & Western Railway Company is a corporation created, chartered and existing under and by virtue of the laws of the State of New York, and that it has its principal office at New York in said State.

90

Respondent supposes it to be true that the New York & New England Railroad Company is a corporation created, chartered and existing under and by virtue of the laws of the States of Massachusetts, Connecticut, Rhode Island and New York, and that it has its principal office at Boston in the State of Massachusetts.

Respondent supposes it to be true that the Delaware & Hudson Canal Company is a corporation created, chartered and existing under and by virtue of the laws of the State of New York, and that it has its principal office in New York in said State.

II.

Respondent admits that the defendants named in the petition filed in this case, were on the 9th of April, 1890, and still are common carriers, engaged in the transportation of persons and property; that some of them were and are so engaged wholly by railroad, and some of them wholly by water, and some of them partly by railroad and partly by water.

Respondent denies that there was on the 9th of April, 1890, or is now, any common control, management or arrangement between this respondent and any of its codefendants for the continuous carriage or shipment by its or their railroads or lines of steamers. As to whether any such common control, management or arrangement exists between any of the other defendants to the petition, respondent has no knowledge, information or belief.

Respondent admits that some of said defendants were and are engaged in the transportation of persons and property between seaboard points in the States of Massachusetts, New York, Pennsylvania and Maryland to points in the State of Tennessee.

III.

Respondent admits that on or about April 9th, 1890, an association styling itself the Board of Trade of Chattanooga, and claiming to be a mercantile society, duly incorporated under the laws of the State of Tennessee, and claiming to have its principal office at Chattanooga in said State, filed a petition before the Interstate Commerce Commission, for an alleged violation on the part of said defendant, of the provisions of the act to regulate commerce, and that Exhibit "A" to the petition filed in this case, is a true copy of said petition, and respondent admits that a true copy of said petition was forwarded to respondent; and respondent supposes it to be true that copies of said petition were forwarded to each of the other defendants named therein.

91

IV.

Respondent supposes it to be true that Exhibits B, C, D, E, F, G, H, I, K, L, O and P, to the petition filed in this case, are true copies

of the answers of the respective defendants as alleged in the petition filed in this case.

V.

Respondent admits that it appeared before the Interstate Commerce Commission at Chattanooga on the 12th day of November, 1890, and that some of its codefendents also appeared, but whether all of the defendants who are stated in the petition filed in this case as having appeared on that occasion did appear, respondent has no knowledge, information or belief, nor has it any knowledge or information as to whether said other defendants had any notice that there would be any hearing of the controversy at Chattanooga on that date.

VI.

Respondent denies that it was made to appear to the satisfaction of the said commission, at said alleged hearing, or at any other time, that this respondent had violated any of the provisions of the act to regulate commerce in any respect whatever, either as alleged in the original petition or otherwise.

Respondent denies that it has violated any of the provisions of said act as it will prove at the hearing of this case.

Respondent denies that said commission, duly, or legally, determined the matters or things that were in controversy, or at issue, between the said parties, on the contrary, respondent is advised, and so insists, that such determination of said matters and things as was made by said commission was illegal.

Respondent admits that said commission made a report in writing in respect to said matters and things, and that Exhibit "Q" to the petition filed in this case is a true copy of said report; which report included the finding of facts upon which the conclusion of said commission is based.

92 Respondent denies that said commission duly formulated any order or notice in relation to the matters or things stated or charged in said original petition.

Respondent denies that such order or notice as was made or issued by said commission with respect to said matters or things was in accordance with or agreeable to the requirements of the statute in such case made and provided.

Respondent denies that said order now remains in full force or effect, or that it was ever in force or effect.

Respondent supposes it to be true that said order has never been vacated, set aside, altered, modified or changed in any respect whatever, and it admits that Exhibit "R" to the petition filed in this case is a true copy of said order, but respondent is advised, and insists, that said order and said notice are illegal and not authorized by the act to regulate commerce.

Respondent admits that said commission caused a properly authenticated copy of its said report, together with said order and notice aforesaid, to be delivered to respondent.

VII.

Respondent denies that it has ever violated any of the provisions of the act to regulate commerce.

Respondent denies that it has at any time been unmindful of its duty or of any lawful decision or determination of said commission; or that it has ever disregarded or set at naught any lawful order or authority of said commission; or that it has ever wilfully or knowingly, or at all violated or disobeyed any lawful order of said commission.

VIII.

Respondent admits that prior to April 9th, 1890, and ever since that time it has participated in making, enforcing and receiving lower rates for the transportation of property from Boston in the State of Massachusetts, New York in the State of New York, Philadelphia in the State of Pennsylvania, Baltimore in the State of Maryland, and other eastern seaboard cities through Chattanooga to Nashville, than have been made and accepted by some of its co-defendants during the same time for the transportation of like property from Boston, New York, Philadelphia, Baltimore and other eastern seaboard cities to Chattanooga, Tennessee.

Respondent admits that such property has been transported by the same steamships and over the same railroads, in the same direction, and that the rates to Nashville from said eastern
93 seaboard cities have been less than the rates from said eastern seaboard cities to Chattanooga, and that the distance via said steamships and railroads is less to Chattanooga than to Nashville.

But, notwithstanding said facts are true, respondent denies that it has been guilty of any violation of the fourth section of the act to regulate commerce. Because, it says, that the transportation of such property from said eastern seaboard cities to Nashville, has not been and is not conducted under substantially similar circumstances and conditions as the transportation of like property from said eastern seaboard cities via said steamships and railroads to Chattanooga for the following reasons, viz:

1st. There are certain steamships and sailing vessels, which ply between said eastern seaboard cities and New Orleans, Louisiana, and certain steamboats and barges which ply from New Orleans to Paducah, Kentucky and beyond, and certain other steamboats which ply from Paducah to Nashville, Tennessee, thus forming lines of all-water transportation from said eastern seaboard cities to Nashville, and that rates of freight can be obtained by said lines of water transportation from said eastern seaboard cities to Nashville which prevent the all-rail rates from said eastern seaboard cities to Nashville being materially increased above what they are at present.

II.

Lines of steamships ply between said eastern seaboard cities and Newport News and Norfolk, Virginia; the Chesapeake & Ohio railroad extends from Newport News to Cincinnati, Ohio, and Louis-

ville, Kentucky, and the Norfolk & Western railroad extends from Norfolk to Norton, Kentucky, where it connects with the Louisville & Nashville railroad, which extends to Cincinnati and Louisville from Norton. That said last-mentioned steamships and railroads concede lower rates from said eastern seaboard cities to Cincinnati and Louisville respectively, than can be obtained by any all-rail lines, or any other known part rail and part water line. And they concede such rates to Cincinnati and Louisville from said eastern seaboard cities as added to prevailing rates from Cincinnati and Louisville to Nashville, renders it impossible to materially increase the all-rail rates from said eastern seaboard cities to Nashville above the present rates.

III.

94 The New York Central railroad, the Erie railroad, the Pennsylvania railroad and the Baltimore & Ohio railroad, which are known as the trunk lines and which extend from said eastern seaboard cities to Cincinnati and Louisville, concede such rates from said eastern seaboard cities to Cincinnati and Louisville, as added to prevailing rates from Cincinnati and Louisville to Nashville, renders it impossible to materially increase the all-rail rates from said eastern seaboard cities to Nashville above what they now are.

IV.

Certain steamboats ply between Cincinnati and Louisville on the one side and Evansville, Indiana, and Paducah, Kentucky, and points beyond on the other side, and certain lines of steamboats ply from Paducah, Kentucky, to Nashville, Tennessee. There is also a line of boats plying between Evansville and Nashville direct, and such rates can be obtained by said steamboat lines from Cincinnati and Louisville on the one side, to Nashville on the other side, as renders it impossible to increase the all-rail rate between Cincinnati and Louisville on the one side and Nashville on the other side, materially above what they are at present.

Respondent avers that there are no regular lines of water transportation from said eastern seaboard cities to Chattanooga, and no effective competition by water between said eastern seaboard cities and Chattanooga.

Respondent avers that there is no such all-water competition or all-rail competition, or part rail and part water competition between said eastern seaboard cities and Chattanooga, as prevails between said eastern seaboard cities and Cincinnati and Louisville and thence to Nashville.

Respondent avers that there is no such water competition between Cincinnati, Louisville, Evansville, Paducah and New Orleans, on the one side, and Chattanooga on the other, as there is between said cities and Nashville.

Respondent avers that the rates from said eastern seaboard cities to Chattanooga are just and reasonable in and of themselves.

Respondent avers that said rates are just and reasonable as com-

pared with the rates from said eastern seaboard cities to Atlanta and other cities located in the same section as Chattanooga. Chattanooga has the same rates from said eastern seaboard cities as Atlanta, though Atlanta is 138 miles nearer to the seacoast than Chattanooga.

Respondent avers that the rates from said eastern seaboard
95 cities to Chattanooga are the same as the rates from said eastern seaboard cities to Anniston, Alabama; Athens, Georgia; Atlanta, Georgia; Birmingham, Alabama; Cedartown, Georgia; Columbus, Georgia; Dalton, Georgia; Montgomery, Alabama; Eufaula, Alabama; Rome, Georgia; Selma, Alabama; Meridian, Mississippi; Opelika, Alabama, and Talladega, Alabama, and respondent insists that it would not be just and reasonable to reduce the rates from said eastern seaboard cities to Chattanooga, unless said rates were also reduced from said eastern seaboard cities to the above-mentioned cities, which have the same rates as Chattanooga, and none of said cities were represented before the Interstate Commerce Commission, nor are they before the court in this case.

Respondent avers that the rates charged from said eastern seaboard cities to Chattanooga and to Nashville respectively, do not constitute any unjust discrimination or undue preference in favor of Nashville as against Chattanooga. The rates from said eastern seaboard cities to Cincinnati, Louisville and Evansville, are lower than from said eastern seaboard cities to Nashville, and upon freight transported from said eastern seaboard cities through Chattanooga to Nashville, and thence to Cincinnati, Louisville and Evansville, the distance is less from said eastern seaboard cities via that route to Nashville than to Cincinnati, Louisville and Evansville.

The rates from said eastern seaboard cities to Cincinnati, Louisville and Evansville are made by the trunk-line roads above referred to, which do not transport through Chattanooga, and which therefore would not be subject to the operation of the fourth section of the act to regulate commerce, so far as traffic passing from said eastern seaboard cities through Chattanooga to Ohio River points is concerned. It would, therefore, be unjust and unreasonable to force defendants to raise the rates from said eastern seaboard cities to Nashville, via Chattanooga, and thus increase the disadvantage under which Nashville labors as compared with cities located upon the Ohio river, unless the rates from said eastern seaboard cities to said cities upon the Ohio river were also raised.

Whenever Nashville merchants attempt to sell goods north or west, or on the upper or lower Cumberland river, they meet active competition from the merchants of Cincinnati, Louisville, Evansville and other Ohio River cities including even St. Louis, Missouri.

Said trunk-line rates from said eastern seaboard cities to Cincinnati, Louisville and other Ohio River cities are made relative
96 to the rates which obtain between said eastern seaboard cities and Chicago, and the rates which obtain between said eastern seaboard cities and Chicago are controlled by the all-water

line via the lakes, canals and Hudson river, which extend from Chicago to New York. It is practically impossible to increase the rates between said eastern seaboard cities and Cincinnati, Louisville and other Ohio River cities, without increasing in the same proportion the rates from said eastern seaboard cities to Chicago, and said rates cannot be materially increased from said eastern seaboard cities to Chicago above the rates which obtain upon the water line aforesaid.

Respondent would be more than willing to increase the rates between said eastern seaboard cities and Nashville to those which now obtain between said eastern seaboard cities and Chattanooga, if it were possible to do so, but owing to the competitive circumstances and conditions above stated, it is utterly impossible to increase the rates from said eastern seaboard cities to Nashville materially above what they now are.

If therefore, the order made by the Interstate Commerce Commission in this case is to be enforced, the only result will be to prevent respondent and its connections working through Chattanooga, from participating in the traffic between said eastern seaboard cities to Nashville. It will injure respondent and said connections to the extent of many thousands of dollars every year, and yet it would be of no benefit whatever to Chattanooga or its merchants.

Having fully answered, respondent prays to be dismissed with reasonable costs.

NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY.

[SEAL.] By J. W. THOMAS, *President.*

ED. BAXTER,
EAST & FOGG,
J. D. DE BOW,
Att'ys for N., C. & St. L. R'y.

STATE OF TENNESSEE, }
Davidson County. }

Personally appeared before me, Sidney Goode, a notary public, duly appointed and qualified, in and for said county and State aforesaid, J. W. Thomas, president of the Nashville, Chattanooga & St. Louis Railway, the above-named respondent, and signed the foregoing and affixed the seal of said corporation thereto, as the answer of said corporation.

In testimony whereof, I have this day hereunto signed my
97 name and affixed my notarial seal at office at Nashville, Tennessee, this the 29th day of April, 1893.

SIDNEY GOODE,
[SEAL.] *Notary Public.*

And on the same day, to wit, the 4th day of May, A. D. 1893, there was filed in the clerk's office of said court the answer of the

W. & A. R. R. Co., which said answer is clothed in the words and figures following, to wit:

Answer of W. & A. R. R. Co.

(Endorsed:) Filed 4th Day of May, 1893. Henry O. Ewing, Deputy Clerk.

The answer of the Western & Atlantic Railroad Company to the bill of complaint filed in the circuit court of the United States for the eastern district of Tennessee, at Chattanooga, Tennessee, it being No. 384 on the equity docket in the case of The Interstate Commerce Commission *vs.* The East Tennessee, Virginia & Georgia Railway Company *et al.*, to which it is made a defendant.

I.

Respondent supposes it to be true that the East Tenn., Virginia & Georgia Railway Company is a corporation created, chartered and existing under and by virtue of the laws of the State of Tennessee, and that it has its principal office at Knoxville, in said State.

Respondent supposes it to be true that the Norfolk & Western Railroad Company is a corporation created, chartered and existing under and by virtue of the laws of the States of Virginia and West Virginia, and that it has its principal office at Roanoke in the State of Virginia.

Respondent has no knowledge, information or belief as to whether the Old Dominion Steamship Company is a corporation or not, respondent's information is that the principal office of said company is at New York in the State of New York.

Respondent admits that on April 9th, 1890, there was a corporation known as the Western & Atlantic Railroad Company, which was created, chartered and then existing under and by virtue of the laws of the State of Georgia, and that it had its principal office at Atlanta in said State. Respondent is a new and different corporation, though it has a similar name.

Respondent supposes it to be true that the Central Railroad & Banking Company of Georgia, is a corporation created, char-
98 tered and existing under and by virtue of the laws of the State of Georgia, and that it has its principal office at Savannah in said State.

Respondent is informed that there is no such corporation as the Georgia Railroad Company, but that the Louisville & Nashville Railroad Company, and the Central Railroad and Banking Company of Georgia, as assignees of Wm. M. Wadley, lessee, operate a railroad from Atlanta to Augusta under the name of the Georgia Railroad Company, and the said assignees have at Augusta their principal office for the operation of the said railroad.

Respondent supposes it to be true that the Ocean Steamship Company of Savannah is a corporation created, chartered and existing under and by virtue of the laws of the State of Georgia, and that it has its principal office at Savannah in said State.

Respondent supposes it to be true that the South Carolina Railway Company is a corporation created, chartered and existing under and by virtue of the laws of the State of South Carolina, and that it has its principal office at Charleston in said State.

Respondent supposes it to be true that the Clyde Steamship Company is a corporation created, chartered and existing under and by virtue of the laws of the State of South Carolina, and that it has its principal office at Charleston in said State.

Respondent supposes it to be true that the Cincinnati, New Orleans and Texas Pacific Railroad Company is a corporation created, chartered and existing under and by virtue of the laws of the State of Ohio, and that it has its principal office at Cincinnati in said State.

Respondent supposes it to be true that the Baltimore & Ohio Railroad Company is a corporation created, chartered and existing under and by virtue of the laws of the State of Maryland, and that it has its principal office at Baltimore in said State.

Respondent supposes it to be true that the Central Railroad Company of New Jersey is a corporation created, chartered and existing under and by virtue of the laws of the State of New Jersey, and that it has its principal office at New York in the State of New York.

Respondent supposes it to be true that the Nashville, Chattanooga & St. Louis railway was on April 9th, 1890, a corporation created, chartered and then existing under and by virtue of the laws of the State of Tennessee, and that it has its principal office at Nashville in said State. Respondent is informed that it has never been incorporated in Alabama, Georgia or Kentucky.

99 Respondent supposes it to be true that the Pennsylvania Railroad Company is a corporation created, chartered and existing under and by virtue of the laws of the State of Pennsylvania, and that it has its principal office at Philadelphia in said State.

Respondent supposes it to be true that the Pennsylvania Company is a corporation created, chartered and existing under and by virtue of the laws of the State of Pennsylvania, and that it has its principal office at Pittsburg in said State.

Respondent supposes it to be true that the New York, Lake Erie & Western Railway Company is a corporation created, chartered and existing under and by virtue of the laws of the State of New York, and that it has its principal office at New York in said State.

Respondent supposes it to be true that the New York and New England Railroad Company is a corporation created, chartered and existing under and by virtue of the laws of the State of Massachusetts, Connecticut, Rhode Island and New York, and that it has its principal office at Boston, in the State of Massachusetts.

Respondent supposes it to be true that the Delaware & Hudson Canal Company is a corporation created, chartered and existing under and by virtue of the laws of the State of New York, and that it has its principal office at New York in said State.

II.

Respondent admits that the defendants named in the petition filed in this case, were on the 9th of April, 1890, and still are common carriers, engaged in the transportation of persons and property; that some of them were and are so engaged wholly by railroad, and some of them wholly by water, and some of them partly by railroad and partly by water.

Respondent denies that there was on the 9th day of April, 1890, or is now, any common control, management or arrangement between this respondent and any of its codefendants for the continuous carriage or shipment by its or their railroads or lines of steamers.

As to whether any such common control, management or arrangement exists between any of the other defendants to the petition, respondent has no knowledge, information or belief.

Respondent admits that some of said defendants were and are engaged in the transportation of persons and property be-
100 tween seaboard points in the States of Massachusetts, New York, Pennsylvania and Maryland to points in the State of Tennessee.

III.

Respondent admits that on or about April 9th, 1890, an association styling itself the Board of Trade of Chattanooga and claiming to be a mercantile society, duly incorporated under the laws of the State of Tennessee, and claiming to have its principal office at Chattanooga in said State, filed a petition before the Interstate Commerce Commission, for an alleged violation on the part of said defendants, of the provisions of the act to regulate commerce, and that Exhibit "A" to the petition filed in this case, is a true copy of said petition; and respondent admits that a true copy of said petition was forwarded to respondent and respondent supposes it to be true, that copies of said petition were forwarded to each of the other defendants named therein.

IV.

Respondent supposes it to be true that Exhibits B, C, D, E, F, G, H, I, K, L, O, and P, to the petition filed in this case, are true copies of the answers of the respective defendants as alleged in the petition filed in this case.

V.

Respondent admits that it appeared before the Interstate Commerce Commission at Chattanooga on the 12th day of November, 1890, and that some of its codefendants also appeared, but whether all of the defendants who are stated in the petition filed in this case as having appeared on that occasion did appear, respondent has no knowledge, information or belief, nor has it any knowledge or information as to whether said other defendants had any notice that there would be any hearing of the controversy at Chattanooga on that date.

VI.

Respondent denies that it was made to appear to the satisfaction of said commission, at said alleged hearing, or at any other time, that this respondent had violated any of the provisions of the act to regulate commerce in any respect whatever, either as alleged in the original petition or otherwise.

Respondent further denies that it has violated any of the provisions of said act, as it will prove at the hearing of this case.

101 Respondent denies that said commission, duly or legally, determined the matters or things that were in controversy or at issue, between said parties, on the contrary, respondent is advised, and so insists, that such determination of said matters and things as was made by said commission was illegal.

Respondent admits that said commission made a report in writing in respect to said matters and things and that Exhibit "Q" to the petition filed in this case is a true copy of said report; which report included the finding of facts upon which the conclusion of said commission is based.

Respondent denies that said commission duly formulated any order or notice in relation to the matters or things stated or charged in said original petition.

Respondent denies that such order or notice as was made or issued by said commission with respect to said matters or things was in accordance with or agreeable to the requirements of the statute in such case made and provided.

Respondent denies that said order now remains in full force or effect, or that it was ever in force or effect.

Respondent supposes it to be true that said order has never been vacated, set aside, altered, modified or changed in any respect whatever, and it admits that Exhibit "R" to the petition filed in this case is a true copy of said order, but respondent is advised, and insists, that said order and said notice are illegal and not authorized by the act to regulate commerce.

Respondent admits that said commission caused a properly authenticated copy of its said report, together with said order and notice aforesaid, to be delivered to respondent.

VII.

Respondent denies that it has ever violated any of the provisions of the act to regulate commerce.

Respondent denies that it has at any time been unmindful of its duty, or of any lawful decision or determination of said commission; or that it has ever disregarded or set at naught any lawful order or authority of said commission; or that it has ever wilfully, or knowingly, or at all, violated or disobeyed any lawful order of said commission.

VIII.

Respondent admits that prior to April 9th, 1890, and ever since

that time, it has participated in making, enforcing and re-
102 ceiving lower rates for the transportation of property from Boston in the State of Massachusetts, New York in the State of New York, Philadelphia in the State of Pennsylvania, Baltimore in the State of Maryland, and other eastern seaboard cities through Chattanooga to Nashville, than have been made and accepted by it, and some of its codefendants, during the same time for the transportation of like property from Boston, New York, Philadelphia, Baltimore and other eastern seaboard cities to Chattanooga, Tennessee.

Respondent admits that such property has been transported by the same steamships and over the same railroads in the same direction, and that the rates to Nashville from said eastern seaboard cities have been less than the rates from said eastern seaboard cities to Chattanooga, and that the distance via said steamships and railroads is less to Chattanooga than to Nashville. But, notwithstanding said facts are true, respondent denies that it has been guilty of any violation of the fourth section of the act to regulate commerce. Because it says that the transportation of such property from said eastern seaboard cities to Nashville, has not been and is not conducted under substantially similar circumstances and conditions, as the transportation of like property from said eastern seaboard cities via said steamships and railroads to Chattanooga for the following reasons, viz:

I.

There are certain steamships and sailing vessels which ply between said eastern seaboard cities and New Orleans, Louisiana, and certain steamboats and barges which ply from New Orleans to Paducah, Kentucky, and beyond, and certain other steamboats which ply from Paducah, Kentucky, to Nashville, Tennessee, thus forming lines of all-water transportation from said eastern seaboard cities to Nashville, and that rates of freight can be obtained by said lines of water transportation from said eastern seaboard cities to Nashville, which prevent the all-rail rates from said eastern seaboard cities to Nashville being materially increased above what they are at present.

II.

Lines of steamships ply between said eastern seaboard cities and Newport News and Norfolk, Virginia; the Chesapeake & Ohio railroad extends from Newport News to Cincinnati, Ohio, and Louisville, Kentucky, and the Norfolk and Western railroad extends from Norfolk to Norton, Kentucky, where it connects with the
103 Louisville and Nashville railroad, which extends from Norton to Cincinnati and Louisville. That said last-mentioned steamships and railroads concede lower rates from said eastern seaboard cities to Cincinnati and Louisville, respectively, than can be obtained by any all-rail lines, or any other known part rail and part water line. And they concede such rates to Cincinnati and Louisville from said eastern seaboard cities, as added to prevailing rates from Cincinnati and Louisville to Nashville renders it impos-

sible to materially increase the all-rail rates from said eastern seaboard cities to Nashville above the present rates.

III.

The New York Central railroad, the Erie railroad, the Pennsylvania railroad, and the Baltimore & Ohio railroad, which are known as the trunk lines and which extend from said eastern seaboard cities to Cincinnati and Louisville, concede such rates from said eastern seaboard to Cincinnati and Louisville, as added to prevailing rates from Cincinnati and Louisville, renders it impossible to materially increase the all-rail rates from said eastern seaboard cities to Nashville above what they now are.

IV.

Certain steamboats ply between Cincinnati and Louisville on the one side and Evansville, Indiana, and Paducah, Kentucky, and points beyond, on the other side, and certain lines of steamboats ply from Paducah, Kentucky, to Nashville, Tennessee. There is also a line of boats plying between Evansville and Nashville direct, and such rates can be obtained by said steamboat lines from Cincinnati and Louisville on the one side, to Nashville on the other side, as renders it impossible to increase the all-rail rate between Cincinnati and Louisville on the one side, and Nashville on the other side, materially above what they are at present.

Respondent avers that there are no regular lines of water transportation from said eastern seaboard cities to Chattanooga, and no effective competition by water between said eastern seaboard cities and Chattanooga.

Respondent avers that there is no such all water competition or all-rail competition, or part rail and part water competition between said eastern seaboard cities and Chattanooga, as prevails between said eastern seaboard cities and Cincinnati and Louisville, and thence to Nashville.

104 Respondent avers that there is no such water competition between Cincinnati, Louisville, Evansville, Paducah and New Orleans on the one side, and Chattanooga on the other, as there is between said cities and Nashville.

Respondent avers that the rates from said eastern seaboard cities to Chattanooga are just and reasonable in and of themselves.

Respondent avers that said rates are just and reasonable as compared with the rates from said eastern seaboard cities to Atlanta and other cities located in the same section as Chattanooga.

Chattanooga has the same rates from said eastern seaboard cities as Atlanta, though Atlanta is 138 miles nearer to the seacoast than Chattanooga.

Respondent avers that the rates from said eastern seaboard cities to Chattanooga, are the same as the rates from said eastern seaboard cities to Anniston, Ala.; Athens, Ga.; Atlanta, Ga.; Birmingham, Alabama; Cedartown, Georgia; Columbus, Georgia; Dalton, Georgia; Montgomery, Alabama; Eufaula, Alabama; Rome, Georgia;

Selma, Alabama; Meridian, Mississippi; Opelika, Alabama, and Talladega, Alabama, and respondent insists that it would not be just and reasonable to reduce the rates from said eastern seaboard cities to Chattanooga, unless said rates were also reduced from said eastern seaboard cities to the other above-mentioned cities, which have the same rates as Chattanooga, and none of said cities were represented before the Interstate Commerce Commission, nor are they before the court in this case.

Respondent avers that the rates charged from said eastern seaboard cities to Chattanooga and to Nashville, respectively, do not constitute any unjust discrimination or undue preference in favor of Nashville as against Chattanooga. The rates from said eastern seaboard cities to Cincinnati, Louisville and Evansville are lower than from said eastern seaboard cities to Nashville, and upon freight transported from said eastern seaboard cities through Chattanooga to Nashville and thence to Cincinnati, Louisville and Evansville, the distance is less from said eastern seaboard cities via that route to Nashville than to Cincinnati, Louisville and Evansville.

The rates from said eastern seaboard cities to Cincinnati, Louisville and Evansville are made by the trunk-line roads above referred to, which do not transport through Chattanooga, and which therefore would not be subject to the operation of the fourth section of the act to regulate commerce so far as traffic passing from said eastern seaboard cities through Chattanooga to Ohio River points is concerned. It would, therefore, be unjust and unreasonable to force defendants to raise the rates from said eastern seaboard cities to Nashville via Chattanooga, and thus increase the disadvantage under which Nashville labors as compared with cities located upon the Ohio river, unless the rates from said eastern seaboard cities to said cities upon the Ohio river were also raised.

Whenever Nashville merchants attempt to sell goods North or West, or on the upper or lower Cumberland river, they meet active competition from the merchants of Cincinnati, Louisville, Evansville and other Ohio River cities, including even St. Louis, Missouri.

Said trunk-line rates from said eastern seaboard cities to Cincinnati, Louisville and other Ohio River cities are made relative to the rates which obtain between said eastern seaboard cities and Chicago, and the rates which obtain between said eastern seaboard cities and Chicago are controlled by the all-water line via the lakes, canals and the Hudson river, which extend from Chicago to New York. It is practically impossible to increase the rates between said eastern seaboard cities and Cincinnati, Louisville and other Ohio River cities, without increasing in the same proportion the rates from said eastern seaboard cities to Chicago, and said rates cannot be materially increased from said eastern seaboard cities to Chicago, above the rates which obtain upon the water line aforesaid.

Respondent would be more than willing to increase the rates between said eastern seaboard cities and Nashville to those which now obtain between said eastern seaboard cities and Chattanooga, if it were possible to do so, but owing to the competitive circum-

stances and conditions above stated, it is utterly impossible to increase the rates from said eastern seaboard cities to Nashville materially above what they now are.

If, therefore, the order made by the Interstate Commerce Commission, in this cause, is to be enforced, the only result will be to prevent respondent and its connections working through Chattanooga from participating in the traffic from said eastern seaboard cities to Nashville. It will injure respondent and said connections to the extent of many thousands of dollars every year, and yet it would be of no benefit whatever to Chattanooga or its merchants.

Having fully answered, respondent prays to be dismissed with reasonable costs.

106 WESTERN & ATLANTIC RAILROAD COMPANY,
By J. W. THOMAS, *General Manager.*

ED. BAXTER,
EAST & FOGG,
J. D. DE BOW, *Att'ys.*

STATE OF TENNESSEE, }
Davidson County. }

Personally appeared before me, Sidney Goode, a notary public, duly appointed and qualified in and for said county and State aforesaid, J. W. Thomas, general manager of The Western & Atlantic Railroad Company, the above-named respondent, and signed the foregoing as the answer of said railroad. Said corporation has no seal.

In testimony whereof, I have this day hereunto signed my name and affixed my notarial seal at office at Nashville, Tennessee, this the 29 day of Apr., 1893.

SIDNEY GOODE,
[SEAL.] *Notary Public.*

And afterwards, to wit, on the 6th day of May, A. D. 1893, the answer of the Louisville & Nashville Railroad Company and the Central Railroad & Banking Company of Georgia was filed in the clerk's office of said court; which said answer is clothed in the words and figures following, to wit:

Answer of the Louisville & Nashville Railroad Company and the Central Railroad and Banking Company of Georgia.

(Endorsed:) Filed 6 Day of May, 1893. Henry O. Ewing, Deputy Clerk.

The joint and several answer of the Louisville & Nashville Railroad Company and the Central Railroad and Banking Company of Georgia (sued by the name of the "Georgia Railroad Company") to the bill filed in equity in the circuit court of the United States for the eastern district of Tennessee by the Interstate Commerce Commission against the East Tennessee, Virginia and Georgia Railway Company and others, No. 384 on the rule docket of said court.

107 I.

Respondents aver that there is no such corporation as the "Georgia Railroad Company."

The Georgia Railroad & Banking Company is a corporation created, chartered and existing under and by virtue of the laws of the State of Georgia, and has its principal office at Augusta in said State.

Said company owns a main line of railroad extending from Augusta to Atlanta and certain branch railroads, all of which are in the State of Georgia.

On May 7th, 1881, said company leased its main line and branch railroads, together with certain other property, rights, privileges and franchises, to Wm. M. Wadley, and his assigns, for a term of 99 years from Ap'l 1st, 1881.

Afterwards and in the year 1881, the said Wadley transferred and assigned to respondents the joint control and management of the said Georgia railroad and its dependencies, together with the advantages, and profits resulting from the same during the full term of said lease. And ever since said transfer or assignment, respondents have been jointly operating said railroads.

For convenience, said joint operation is conducted under the name of the "Georgia railroad," but as before stated there is no such corporation as the "Georgia Railroad Company."

II.

Respondents suppose it to be true that the companies named as defendants in this case are (with the exception of the Georgia Railroad Company) corporations; that they were respectively created, and chartered, and are now existing under and by virtue of the laws of the several States averred in the petition; and that they respectively have their principal office at the places averred in said petition.

III.

Respondents admit that the companies named as defendants in the petition filed in this case, were, on Ap'l 9th, 1890, and still are,

common carriers engaged in the transportation of persons and property over their respective railroads, or in their respective steamships. Some of said defendants are so engaged in transportation wholly by water; some of them are so engaged wholly by railroad; and some of them are so engaged partly by water and partly by railroad.

108 Respondent, The L. & N. R. R. Co., owns a majority of the capital stock of its codefendant, The Nashville, Chattanooga & St. Louis Railway.

Said Nashville, Chattanooga & St. Louis railway has leased the Western & Atlantic railroad for a term of 29 years from Dec. 27th, 1890.

Respondent, The Central Railroad and Banking Company of Georgia, owns the capital stock of its codefendant, the Ocean Steamship Co.

But with the exceptions just mentioned (if they can be regarded as exceptions), the defendants in this case are not under any common management or control, so far as respondents are informed, or believe. Respondents have no information or belief that there is any arrangement between said defendants for continuous carriage or shipment, by their respective railroads or lines of steamships, except that certain of said defendants have agreed to establish certain through routes with certain through rates, for the transportation of persons and property between certain points.

Some of said defendants have agreed upon such through routes with through rates, for the transportation of persons and property between seaboard points in the States of New York, Pennsylvania and Maryland respectively, to points in the State of Tennessee.

IV.

Respondents admit that on or about Ap'l 9th, 1890, an association, styling itself the Board of Trade of Chattanooga, and claiming to be a mercantile society duly incorporated under the laws of the State of Tennessee, and claiming to have its principal office at Chattanooga, in said State, filed a petition before the Interstate Commerce Commission for an alleged violation by said defendants of the provisions of the act to regulate commerce; and that Exhibit "A" to the petition filed in this case, is a true copy of said original petition. Respondents admit that a true copy of said petition was forwarded to them; and they suppose it to be that copies of said original petition were forwarded to each of the other defendants named therein.

V.

Respondents suppose it to be true that Exhibits B, C, D, E, F, G, H, I, K, L, M, N, O and P, to the petition filed in this case are as alleged in said petition, true copies of the answers which were filed respectively by the defendants to said original petition.

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VI.

Respondent, The Central Railroad and Banking Company of Georgia, and certain others of the defendants to said original petition, appeared before the Interstate Commerce Commission, at Chattanooga, on the 12th day of November, 1890; but respondent, The L. & N. R. R. Co., did not appear. Whether all of the other defendants which are mentioned in the petition, filed in the case, as having appeared on that occasion, did in fact appear, respondents have no information or belief; nor have respondents any information or belief as to whether any of said other defendants had notice that there would be a hearing of the controversy at that time or place.

VII.

Respondents deny that it was made to appear to the satisfaction of said commission, at said alleged hearing, or at any other time that respondents had in any respect violated any of the provisions of the act to regulate commerce; and respondents deny that they had in any respect violated any of the provisions of said act. Respondents deny that said commission duly or legally determined the matters or things in controversy, or at issue, between said parties. On the contrary, respondents are advised, and insist, that such determination as was made by said commission, of said matters and things was not in accord with said act, and was therefore illegal.

Respondents admit that said commission made a report in writing in respect to said matters and things, which report included the findings of fact upon which the conclusions of said commission were based; and respondents admit that Exhibit "Q" to the petition filed in this case, is a true copy of said report.

Respondents deny that said commission duly formulated an order or notice, in relation to the matters or things stated or charged in said original petition. On the contrary respondents are advised and insist that such order as was made by said commission, was not made agreeably to the requirements of the statute in such case made and provided, and was therefore illegal and void.

Respondents admit that said order has never been vacated, set aside, altered, modified or changed in any respect; but they deny that it remains in full force or effect. On the contrary they are advised and insist that it was, and is illegal, and therefore has never been in force or effect. Respondents admit that Exhibit "R" to the petition filed in this case, is a true copy of said alleged
110 order. Respondents admit that they received a duly authenticated copy of said report, order and notice.

VIII.

Respondents deny that they have been unmindful of their duty, or of any lawful decision or determination of said commission. Respondents deny that they have wholly, or at all, disregarded or set at naught, any lawful authority, or order of said commission, in regard to any matter whatever.

Respondents deny that they have knowingly or wilfully, or at all, violated or disobeyed any lawful order of said commission.

Respondents deny that they have wholly or at all, neglected or refused, or that they now neglect or refuse, to comply with any lawful order or requirement of said commission.

IX.

Respondents admit that, without having made application to said commission for relief from the fourth section of the act to regulate commerce, they have, since Feb. 1st, 1893, in connection with certain of their codefendants, made, enforced and received, higher rates for the transportation of property from Boston, in the State of Massachusetts; New York, in the State of New York; Philadelphia, in the State of Pennsylvania; Baltimore, in the State of Maryland, and other eastern seaboard points, to Chattanooga, Tenn., than have been made and accepted by them during the same time, for transportation to Nashville, Tenn. Respondents aver that transportation from Boston, New York, Philadelphia, Baltimore and other eastern seaboard points to Chattanooga, is not conducted under substantially similar circumstances and conditions, with transportation from said eastern cities to Nashville; and that the dissimilarity between such circumstances and conditions is such that respondents and their connections may lawfully charge and receive lower rates to Nashville than to Chattanooga, from said eastern seaboard cities, without violating the fourth section, or any of the other provisions of the act to regulate commerce.

Said lower rates to Nashville are forced upon respondents and their connections by certain competitive circumstances and conditions which exist at Nashville, but do not exist at Chattanooga.

111 X.

The rates from New York and other eastern seaboard cities to Nashville are controlled by the following competitive circumstances and conditions.

First. The rail rates from New York to Chicago are inflexibly controlled by the direct competition of water carriers on the lakes, and the St. Lawrence river, and the Erie canal, and the Hudson river.

Second. The rail rates from New York to Chicago having been thus fixed with reference to direct water competition as aforesaid, rail rates from Boston, Philadelphia, Baltimore and other eastern seaboard cities respectively, to Chicago, are made to bear a certain fixed relation to the rates which obtain from New York to Chicago.

Third. The rail rates from New York, Boston, Philadelphia, Baltimore and other seaboard cities respectively, to Chicago, having been thus fixed, the rates from said eastern cities to Cincinnati, Louisville, Evansville and St. Louis respectively, are made to bear certain fixed relations to the rates which obtain from said eastern seaboard cities, respectively, to Chicago.

Fourth. The relations which exist between the rates from Boston, Philadelphia, Baltimore and other eastern seaboard cities, respectively, as compared with the rates from New York, and the relations which exist between the rates to Cincinnati, Louisville, Evansville and St. Louis, respectively, as compared with the rates to Chicago have been fixed for many years. They were fixed by competition fierce and protracted; and it would be impossible now to disturb the adjustment, without throwing the entire commerce of the country into confusion.

Fifth. Steamships and sailing vessels ply between New York, Boston, Philadelphia, Baltimore and other eastern seaboard cities on the one side and New Orleans on the other. Steamboats and barge lines ply between New Orleans, on the one side, and Memphis, Paducah, Evansville, Louisville and Cincinnati, on the other. There is, therefore, an open, all-water route from all of said eastern seaboard cities, to Louisville and Cincinnati, and the all-rail rates from said eastern seaboard cities, to Cincinnati and Louisville, respectively, cannot greatly exceed the rates which can be obtained by said all-water route.

Steamboat lines ply between Paducah and Evansville on the Ohio river, and Nashville on the Cumberland river. Said boats connect with boats which ply upon the Ohio and Mississippi rivers,
112 and the result is that Nashville also has an open, all-water route from said eastern seaboard cities. The rail rates from said cities cannot therefore, greatly exceed the rates which can be obtained by said all-water route.

Sixth. The all-rail rates from said eastern seaboard cities to Cincinnati and Louisville respectively, are also materially affected by the fact that steamship lines ply between said eastern seaboard cities on the one side, and Newport News and Norfolk, Virginia, on the other. The Chesapeake & Ohio railroad extends from Newport News to Cincinnati and Louisville; and the Norfolk and Western railroad extends from Norfolk to Cincinnati and Louisville, and the rates which can be obtained by those two part water and part rail routes cannot be greatly exceeded by the all-rail routes.

Seventh. The rates from said eastern seaboard cities to Cincinnati and Louisville, respectively, having been fixed by the competitive circumstances and conditions above referred to, the rail rates from said eastern seaboard cities to Nashville cannot greatly exceed the rates to Cincinnati or Louisville, added to the rates which can be obtained by steamboats from Cincinnati or Louisville to Nashville.

It will be seen therefore that the rates from said eastern seaboard cities to Nashville are practically controlled by water competition.

XI.

There is no effective open-water route from said eastern seaboard cities to Chattanooga, nor from Cincinnati or Louisville to Chattanooga. The water competition which forces down the through rail rates from Cincinnati and Louisville, respectively, to Nashville does not extend to Chattanooga.

XII.

Respondents aver that the rates charged from said eastern seaboard cities, respectively, to Chattanooga, are just and reasonable, in and of themselves, considering the circumstances and conditions under which the transportation is conducted. They are the result of actual competition between various all-rail lines, and various part rail and part water lines of transportation. Chattanooga has the full benefit of all the competition which exists there; but it so happens that there is no such water competition at that place as there is between Cincinnati, Louisville and Nashville.

113 XIII.

The rates to Chattanooga from said eastern seaboard cities are the same as from said cities to Atlanta, Georgia, which is 138 miles nearer the seacoast than Chattanooga.

XIV.

The rates from Chattanooga to said eastern seaboard cities are the same as from said cities to Athens, Atlanta, Cedartown, Columbus, Rome and Dalton, Georgia; Anniston, Birmingham, Montgomery, Eufaula, Opelika, Talladega and Selma, Alabama; and Meridian, Mississippi. It would be an unjust discrimination against said cities in favor of Chattanooga, to reduce the rates to Chattanooga without reducing them at the same time to all of those cities which have the same rates as Chattanooga.

XV.

The rates from said eastern seaboard cities are less to Cincinnati, Louisville and Evansville, than to Nashville.

In all the territory north, east and west of Nashville, the Nashville merchants are forced to compete with the merchants of Cincinnati, Louisville and Evansville; and if the rates from said eastern seaboard cities to Nashville shall be increased, the Nashville merchants will be placed at a still greater disadvantage in their competition with Cincinnati, Louisville, and Evansville; unless the rates to those cities shall also be increased correspondingly.

XVI.

The rates from said eastern seaboard cities to Nashville are made by transportation lines which do not work through Chattanooga, and it would be unjust to force the Georgia railroad, and the other lines which work through Chattanooga, to increase the rates to Nashville, unless the lines which do not work through Chattanooga, are forced to correspondingly increase their rates to Nashville, at the same time.

XVII.

Certain relations have for many years existed between the rates from said eastern seaboard cities to Memphis, and the rates from said eastern seaboard cities to Nashville; and it would be an unjust

discrimination in favor of Memphis against Nashville to increase the rates to Nashville, without correspondingly increasing the rates to Memphis at the same time.

114 The commission decided in this case, in effect, that owing to water competition, it is practically impossible to increase the rates to Memphis; and it will be found that it is equally impossible to increase them to Nashville.

And having fully answered, respondents pray to be dismissed with their reasonable costs.

ED. BAXTER,
JOS. B. CUMMINS,
Solicitors for Respondents, Louisville & Nashville Railroad Company.

[L. & N. SEAL.] By —— ——, *President.*

Attest: —— ——, *Secretary.*

STATE OF KENTUCKY, }
County of Jefferson. }

Personally appeared before me, —— ——, a notary public, duly appointed, commissioned and qualified, in and for the State and county aforesaid, M. H. Smith and —— Ellis, who are respectively president and secretary of The Louisville and Nashville Railroad Company, the above-named respondent, and signed the foregoing answer and affixed thereto the seal of said company, as the answer of said company.

Witness my hand and notarial seal of office at Louisville, Kentucky, this — day of May, 1893.

——,
Notary Public.

And afterwards, to wit, on the 15th day of May, A. D. 1893, the answer of the Ocean Steamship Company of Savannah was filed in the clerk's office of said court, which said answer is clothed in the words and figures following, to wit:

Answer of Ocean Steamship Company of Savannah.

(Endorsed:) Filed May 15, 1893. Henry O. Ewing, Deputy Clerk.

115 In the Circuit Court of the U. S., Southern Division, Eastern District of Tennessee.

INTERSTATE COMMERCE COMMISSION *vs.* EAST TENN., VA. & GA. RAILWAY CO. and THE Ocean Steamship Co. of Savannah *et al.*	In Equity. No. 384.

The Answer of the Ocean Steamship Co. of Savannah to the Petition Filed in the Above Case.

This defendant appearing to the said petition under and pursuant to the order of your honorable court made on the 24th day of March,

1893, served upon H. M. Comer, as its president, in the city of Savannah, State of Ga., most respectfully protesting, states that its principal office as fixed by its charter is at Savannah, Ga., and that it is a corporation duly organized and existing under the laws of the State of Georgia, and engaged exclusively in ocean traffic, plying from the city of Savannah, in State of Georgia, to New York, in the State of New York, and other points, and that its principal office is not situated within the eastern district of Tennessee, nor were any of the alleged violations or disobedience by it of the order of the Interstate Commerce Commission, referred to in said petition, committed or happen within the judicial district of the circuit court of the U. S. for the eastern district of Tenn., and therefore petitioner was not authorized under the act to regulate commerce as amended to file its petition as against this defendant in this court.

Wherefore this defendant prays that the said petition shall be as to it dismissed.

Second. This defendant likewise protesting against the said petition, excepts thereto because the charge or charges made against said defendants or against this defendant are not set out with sufficient certainty, nor does it show in what manner or how this defendant has in any way violated said interstate-commerce act or the order of the Interstate Commerce Commission, nor does said petition in other respects disclose with reasonable certainty what said defendants or this defendant were or was required to do and observe thereunder.

Wherefore this defendant prays that the said petition shall as to to it be dismissed.

Third. This defendant, without conceding the jurisdiction
116 of your honorable court or waiving the foregoing plea, the protests, exceptions and prayers for dismissal of this petition, as to this defendant, but expressly reserving to itself all rights, benefits and advantages therefrom as fully as if it had rested solely thereon, for answer to said petition, saith :

I.

That the proportion of the through rate received by it for carriage over its line of the traffic which is the subject-matter of complainant, is just and reasonable and as it is fixed is not in violation of the act to regulate commerce.

II.

This defendant avers that the conclusions of the said plaintiff commission were not justified by the law or the facts, because *inter alia* of the character of the service and facts and circumstances which are in larger parts set out and disclosed in the answers to the original complaint, attached as exhibits to the petition filed in this cause, and particularly exhibits marked C, D, E, F, I, K and M, and reference is hereby made to said exhibits with like force and effect as if the contents of said exhibits were in form or in substance herein fully set out and recited.

III.

This defendant further avers that its proportions of the rates received for such traffic were and are as little as it can afford to do same for.

IV.

This defendant is advised and therefore avers that the act entitled "An act to regulate commerce" does not authorize the commission, under such circumstances as were presented to it by the complainant in answers filed and by the evidence taken thereunder, to determine and find that rates such as were received by this defendant under the circumstances, were in violation of said act, and this defendant denies that the said board of trade was and is entitled to any relief as against it, but avers that the rates then and now maintained by this defendant were and are reasonable and just, proper and lawful.

Wherefore, this defendant prays that the petition in this cause may be dismissed as to it, not only for want of jurisdiction
117 and because of defective petition as hereinbefore set out and prayed for, but also for lack of just foundation for relief in fact and in law.

Witness the corporate seal of said Central Railroad & Banking Company of Georgia, hereto attached, duly attested this — day of May, 1893.

THE OCEAN STEAMSHIP COMPANY,
By H. M. COMER, *President.*

Attest: T. M. CUNNINGHAM, *Cashier.*
[SEAL.]

BARR & McADOO,
Solicitors for Defendant.

And on the same day, to wit, the 15th day of May, 1893, there was filed in the clerk's office of said court the answer of the Central Railroad & Banking Company of Georgia, which said answer is clothed in the words and figures following, to wit:

Answer of Central Railroad & Banking Company of Georgia.

(Endorsed:) Filed May 15, 1893. Henry O. Ewing, Deputy Clerk.

In the U. S. Circuit Court of the United States, Southern Division of the Eastern District of Tennessee.

THE INTERSTATE COMMERCE COMMISSION *vs.* EAST TENN., VA. & GA. RAILWAY CO., THE CENTRAL R. R. & BANKING CO OF GA., *et al.*	In Equity. No. 384.

The answer of the Central Railroad & Banking Company of Ga. to the petition filed in the above-stated cause.

This defendant appearing to said petition under and pursuant to an order of your honorable court made on 24th day of March, 1893,

most respectfully protesting and reserving to itself all matters of exceptions to said bill, shows:

First. That said order, subpœna and bill have not been properly served upon the defendant, The Central R. R. & Banking Co. of Ga., as the principal office of said defendant is and always has been
118 and is fixed by its charter at Savannah, in the State of Georgia, and not in Atlanta, in said State.

Second. This defendant shows that its principal office is not situate in the judicial district of the circuit court of the U. S. for the eastern district of Tennessee, nor were any of the alleged violations or disobedience by it to the order of the Interstate Commerce Commission, referred to in said petition, and which were considered in the matter of the Board of Trade of Chattanooga against your said defendant and others, and referred to in said petition, committed within said eastern district of Tenn., and for these reasons petitioner in this cause was not authorized under the act to regulate commerce as amended to file its petition as against this defendant in this court.

Wherefore this defendant prays that the said petition shall as to it be dismissed.

Third. This defendant shows that at the time *of* said proceedings on the part of the Board of Trade of Chattanooga against defendant was had, it did not operate any line of railroad within the State of Tenn., or the eastern district thereof, further than delivering within the State of Ga. to connecting lines, freight, merchandise and persons transported over its lines, which at that time did not extend beyond the limits of the State of Ga., within the State of Tennessee.

Fourth. This defendant, likewise protesting against said petition, excepts thereto because it says that said petition does not set out with sufficient certainty the charge or charges made against said defendant, nor the fact or facts relied on and on which the same are founded, now does it show in what particular or how this defendant has been guilty of any violations of said order of the Interstate Commerce Commission; and further in that the proceedings had and taken by and before the Interstate Commerce Commission — not well and sufficiently pleaded nor pleaded according to their legal effect so as to disclose with reasonable certainty what the said defendants or this defendant were or was required to do and observe thereunder.

Wherefore this defendant prays that said petition shall as to it be dismissed.

Fifth. This defendant, without conceding the jurisdiction of your honorable court or waiving the foregoing plea, the protests, exceptions and prayers for dismissal of this petition, as to this defendant, but expressly reserving to itself all rights, benefits and advantages therefrom as full- as if it had rested solely thereon, for answer to said petition, saith:

119 I.

That the proportion of the through rate received by it for carriage over its line of the traffic which is the subject-matter of complainant, is just and reasonable, and as it is fixed is not in violation of the act to regulate commerce.

II.

This defendant avers that the conclusions of the said plaintiff commission were not justified by the law or the facts, because, *inter alia* of the character of the service and facts and circumstances which are in larger parts set out and disclosed in the answers to the original complaint, attached as exhibits to the petition filed in this cause, and particularly exhibits marked C, D, E, F, I, K, and M, and reference is hereby made to said exhibits with like force and effect as if the contents of said exhibits were in form or in substance herein fully set out and recited.

III.

This defendant further avers that its proportions of the rates received for such traffic were and are as little as it can afford to do same for.

IV.

This defendant is advised and therefore avers that the act entitled an act to regulate commerce, does not authorize the commission under such circumstances as were presented to it by the complainant in answers filed and by the evidence taken thereunder to determine and find that rates such as were received by this defendant under the circumstances, were in violation of said act, and this defendant denies that the said board of trade was and is entitled to any re ief as against it, but avers that the rates then and now maintained by this defendant were and are reasonable and just, proper and lawful.

Wherefore, this defendaut prays that the petition in this cause may be dismissed as to it, not only for want of jurisdiction and because of defective petition, as hereinbefore set out and prayed for, but also for lack of just foundation for relief in fact and in law.

Witness the corporate seal of said Central Railroad & Banking Company of Georgia, hereto attached and duly attested this
120 — day of May, 1893.

THE CENTRAL RAILROAD AND BANKING COMPANY,
By H. M. COMER, *President.*

Attest: T. M. CUNNINGHAM, *Cash.*

BARR & McADOO,
Solicitors for Defendant.

And on the same day, to wit, the 15th day of May, 1893. replication of complainant to the answer of the Pennsylvania Railroad

Company was filed in the clerk's office of said court, which said replication is clothed in the words and figures following, to wit:

Replication to the Answer of the Pennsylvania Railroad Company.

(Endorsed:) Filed May 15, 1893. Henry O. Ewing, Deputy Clerk.

In the United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILWAY COMPANY *et al.*

Replication of complainant to the answer of the Pennsylvania Railroad Company in said cause.

This repliant, saving and reserving all advantage of exception to the said answer, because of the manifold insufficiencies thereof, for replication thereto says, that it will aver and prove its said bill to be true and sufficient, and that said answer is untrue and insufficient, wherefore it prays relief as in said bill set out, etc.

H. M. WILTSE,
Solicitor for Complainant.

And on the same day, to wit, the 15th day of May, A. D. 1893, the replication of the complainant, to the answer of the Central Railroad and Banking Company of Georgia, was filed in the
121 clerk's office of said court, which said replication is clothed in the words and figures following, to wit:

Replication to the Answer of the Central Railroad and Banking Company of Georgia.

(Endorsed:) Filed May 15, 1893. Henry O. Ewing, Deputy Clerk.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILWAY COMPANY *et al.*

Replication of complainant in the above-styled cause to the answer of the Central Railroad and Banking Company of Georgia.

This repliant, saving and reserving all benefit and advantage of exception to the manifold insufficiencies of the said answer, for replication thereto says that it will aver and prove its said bill to be true and sufficient and that the said answer is untrue and insufficient.

It therefore prays relief as in the said bill set forth and prayed.

H. M. WILTSE,
Solicitor for Complainant.

And on the same day, to wit, the 15th day of May, A. D. 1893, there was filed in the clerk's office of said court the replication of the complainant to the answer of the Louisville and Nashville Railroad Company and the Central Railroad and Banking Company of Georgia, which said replication is clothed in the words and figures following, to wit:

Replication to the Answer of the Louisville and Nashville Railroad Company and the Central Railroad and Banking Company of Georgia.

(Endorsed:) Filed May 15, 1893. Henry O. Ewing, Deputy Clerk.

122 In the United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILway Company *et al.* } Equity.

Replication of complainant to the answer in the above-styled cause of the Louisville and Nashville Railroad Company and the Central Railroad and Banking Company of Georgia.

This repliant, saving and reserving all benefit and right and advantage of exception to the said answer because of the manifold insufficiencies thereof, for replication thereto says that it will aver and prove its said bill to be true and sufficient, and that the said answer is untrue and insufficient; wherefore it prays relief as in the said bill set forth and prayed.

H. M. WILTSE,
Solicitor for Complainant.

And on the same day, to wit, the 15th day of May, A. D. 1893, there was filed in the clerk's office of said court the replication of the complainant to the answer of the East Tennessee, Virginia and Georgia Railway Company, which said replication is clothed in the words and figures following, to wit:

Replication to the Answer of the East Tennessee, Virginia and Georgia Railway Company.

(Endorsed:) Filed May 15, 1893. Henry O. Ewing, Deputy Clerk.

In the United States Circuit Court in and for the Southern Division of the Eastern District of Tennessee.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILway Company *et al.* } Equity.

Replication of complainant in the above cause to the answer of the East Tennessee, Virginia and Georgia Railway Company.

123 This repliant, saving and reserving all advantage of exception to the manifold insufficiencies of said answer for

replication thereto says, that it will aver and prove its said bill to be true and sufficient, and that said answer is untrue and insufficient, wherefore it prays relief as in said bill set forth and prayed.

H. M. WILTSE,
Solicitor for Complainant.

And on the same day, to wit, the 15th day of May, 1893, the replication of the complainant to the answer of the Western and Atlantic Railroad Company was filed in the clerk's office of said court, which said replication is clothed in the words and figures following, to wit:

Replication of Complainant to the Answer of the Western and Atlantic Railroad Company.

(Endorsed:) Filed May 15, 1893. Henry O. Ewing, Deputy Clerk.

In the United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILWAY ET AL.

Replication of complainant in the above-styled cause to the answer of the Western and Atlantic Railroad Company.

This repliant, saving and reserving all advantage of exception to the said answer, because of the manifold insufficiencies thereof, for replication thereto says, that it will aver and prove its bill to be true and sufficient and says that the said answer is untrue and insufficient; wherefore it prays relief as in said bill set forth and prayed.

H. M. WILTSE,
Solicitor for Complainant.

And on the same day, to wit, the 15th day of May, 1893,
124 there was filed in the clerk's office of said court the replication of complainant to the answer of the Nashville, Chattanooga and St. Louis railway, which said replication is clothed in the words and figures following, to wit:

Replication to the Answer of the Nashville, Chattanooga and St. Louis Railway.

(Endorsed:) Filed May 15, 1893. Henry O. Ewing, Deputy Clerk.

In the United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILWAY Company *et al.* } Equity.

Replication of complainant to the answer of the Nashville, Chattanooga and St. Louis railway.

This repliant, reserving the right and benefit and advantage of all proper exceptions to the said answer because of the manifold insufficiencies thereof, by way of replication thereto, says that it will aver and prove its said bill to be true and sufficient, and that said answer is untrue and insufficient; wherefore it prays relief as in said bill set forth, etc.

H. M. WILTSE,
Solicitor for Complainant.

And on the same day, to wit, the 15th day of May, A. D. 1893, there was filed in the clerk's office of said court the replication of complainant to the answer of the Cincinnati, New Orleans & Texas Pacific Railway Company, which said replication is clothed in the words and figures following, to wit:

Replication to the Answer of the Cincinnati, New Orleans and Texas Pacific Railway Company.

(Endorsed:) Filed May 15, 1893. Henry O. Ewing, Deputy Clerk.

125 In the United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILWAY Company *et al.*

Replication of complainant in the above-styled cause to the answer of The Cincinnati, New Orleans and Texas Pacific Railway Company, defendant.

This repliant, saving and reserving all advantage of exception to the manifold insufficiencies of said answer, thereunto saith that it will aver and prove its said bill to be true and sufficient, and that

the said answer is untrue and insufficient; wherefore it prays relief as in the bill set forth and prayed, etc.

H. M. WILTSE,
Solicitor for Complainant.

And on the same day, to wit: the 15th day of May, A. D. 1893, there was filed in the clerk's office of said court the replication of complainant to the plea of the Delaware and Hudson Canal Company, which said replication is clothed in the words and figures following, to wit:

Replication to Plea of Delaware & Hudson Canal Co.

(Endorsed:) Filed 1893, May 15. Henry O. Ewing, Deputy Clerk.

In the United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILWAY COMPANY *et al.*

Replication of complainant in the above-stated cause to the plea of the Delaware and Hudson Canal Company.

126 This complainant by way of replication to said plea, says that it is not well pleaded as matter of law and is not true as matter of fact. It says that under the law this honorable court has jurisdiction both of the person of the said defendant and the subject-matter of its said petition as the same relates to the said defendant, and that the said defendant has been guilty of violations and disobedience of complainant's orders and requirements as alleged in the petition within the eastern district of Tennessee and at divers other places under such circumstances as give to complainant the legal right to bring this suit against the said defendant and prosecute the same in this court.

Complainant avers and will prove that its said bill is true and sufficient, and that said plea is untrue and insufficient, wherefore it prays for relief as prayed and set forth in its said bill, etc.

H. M. WILTSE,
Solicitor for Complainant.

And on the same day, to wit, the 15th day of May, A. D. 1893, an entry was made upon the journal of said court, which said entry is clothed in the words and figures following, to wit:

Journal "C," page 440, May 15th, 1893.

THE INTERSTATE COMMERCE COMMISSION }
vs. }
E. T., V. & GA. R'Y CO. ET AL. }

In this cause it is ordered by the court that def'ts be allowed 90 days from this time in which to take proof in chief and petitioners are allowed 30 days thereafter in which to take proof in rebuttal, and by consent it is ordered that each and every of the def'ts who have not answered be allowed to rely upon the answers already filed on behalf of their codef'ts, and the replications filed to these answers shall be treated as replications as to any def'ts so relying on such answers. The application for a preliminary injunction is disallowed. It is also ordered that in taking proof, notice to H. M. Wiltse shall be sufficient.

127 And afterwards, to wit: on the 19th day of May, A. D. 1893, a certain demurrer to replication was filed in the clerk's office of said court; which said demurrer is clothed in the words and figures following, to wit:

Demurrer to Replication.

(Endorsed:) Filed 1893, May 19th. Henry O. Ewing, Deputy Clerk.

THE INTERSTATE COMMERCE COMMISSION }
vs. }
THE E. T., V. & GA. R'Y CO. ET AL. }

The defendant "The President, Managers and Company of the Delaware and Hudson Canal Company" demurrer to the replication filed by plaintiff to its plea in abatement heretofore filed in this cause, because said replication is double, as it seeks to raise an issue of law on the sufficiency of said plea and also an issue of fact as to the truth thereof.

Defendant prays judgment that said replication be stricken out.

LEWIS SHEPHERD, *Solicitor.*

And afterwards, to wit: on the 26th day of July, A. D. 1893, an entry was made upon the journal of said court; which said entry is clothed in the words and figures following, to wit:

Journal "C," page 513, July 26, 1893.

THE INTERSTATE COMMERCE COMMISSION }
vs. } No. 384.
E. TENN., VA. & GA. R'Y CO. ET AL. }

In this cause the former order as to taking proof is so far modified as to allow defendants until Sept. 15, 1893, in which to take proof.

And on the same day, to wit: the 26th day of July, A. D. 1893, a petition was filed in the clerk's office of said court, making
128 The Louisville & Nashville Railroad Company a party defendant, and order thereon; which said petition and order are clothed in the words and figures following, to wit:

Petition Making Louisville & Nashville Railroad Company a Party Defendant and Order Thereon.

(Endorsed:) Filed July 26, 1893. Henry O. Ewing, Deputy Clerk.

The United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE EAST TENNESSEE, VIRGINIA AND GEORGIA Railway Company *et al.* } In Equity. No. 384.

And now comes the petitioner in the above-entitled cause and asks leave to amend the original complaint therein by striking out in the 22d, 23d and 24th lines of the 2d page thereof the following words, namely: "The Georgia Railroad Company is a corporation created, chartered and existing under and by virtue of the laws of the State of Georgia and having its principal office at Augusta in said State," and inserting in lieu thereof the following, namely: "The Georgia railroad is an association consisting of the Louisville and Nashville Railroad Company, a corporation created, chartered and existing under and by virtue of the laws of the State of Kentucky, and having its principal office at Louisville in that State, and the Central Railroad and Banking Company of Georgia, a corporation created, chartered and existing under and by virtue of the laws of the State of Georgia, and having its principal office at Savannah, in said State, and said association being known and doing business jointly under the name and style of Georgia railroad;" and that an order may be entered making the Louisville and Nashville Railroad Company a party defendant to this cause.

THE INTERSTATE COMMERCE COMMISSION,
By A. G. SAFFORD, *Solicitor.*

It is hereby agreed on the part of the Louisville and Nashville Railroad Company and the Central Railroad and Banking Company of Georgia, that the foregoing amendment may be
129 allowed, and service of notice of said original petition is hereby accepted and further service of said petition and of the order which may be entered in this proceeding is waived.

It is agreed by complainant that the answer heretofore filed in this cause by the Louisville and Nashville R. R. Co., and the Cen-

tral R. R. and Banking Co: may be accepted as their answer without being filed.

ED. BAXTER,
Sol'r for L. & N. R. R.
A. G. SAFFORD,
Solicitor for Compl't.

Order on Above Petition.

And now on the filing of the foregoing petition and stipulation it is ordered that the prayer of the petitioner be granted, and that the amendment stated in said petition be incorporated into the original complaint, and that the Louisville & Nashville Railroad Company be, and is hereby, made a party defendant in this cause without further service or notice, and that the answer heretofore filed in this cause by the Louisville & Nashville Railroad Company and the Central Railroad & Banking Company of Georgia shall be accepted as their answer to the original complaint, the same as if said answer was filed subsequent to the granting of this order.

Done in court this 26 day of July, 1893.

D. M. KEY, *Judge.*

And on the same day, to wit, the 26th day of July, A. D. 1893, there was filed in the clerk's office of said court a certain petition making Henry Fink, C. M. McGhee and Samuel Spencer, receivers, and D. H. Chamberlain, receiver, and S. M. Felton, receiver, parties, and the order thereon, which said petition and order are clothed in the words and figures following, to wit:

Petition and Order Making Henry Fink, C. M. McGhee, S. Spencer, Receivers; D. H. Chamberlain, Receiver, and S. M. Felton, Receiver, Parties.

(Endorsed:) Filed July 26, 1893. Henry O. Ewing, Deputy Clerk.

130 In the United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE EAST TENNESSEE, VIRGINIA AND Georgia Railway Company *et al.*
In Equity. No. 384.

And now comes the complainant in the above-entitled cause and shows to the court here that Samuel Felton and Charles M. McGhee and S. Spencer, of New York, in the State of New York, and Henry Fink, of Knoxville, in the State of Tennessee, are the receivers and managers of the East Tennessee, Virginia & Georgia railway, and that D. H. Chamberlain, of Charleston, in the State of South Carolina, is the receiver and manager of the South Carolina railway, and that S. M. Felton, of Cincinnati, in the State of Ohio, is the receiver and manager of the Cincinnati, New Orleans & Texas Pacific

railway; and inasmuch as the said receivers of the said several railways may have an interest in any order, direction or decree which the court may make in this cause, the complainant respectfully prays that an order may be entered by this honorable court making the said persons parties defendant in this proceeding and directing method of service, and requiring the said additional parties to make answer to the matters and things set forth in the said complaint by a day certain, the same as if they had been made parties to the original complaint.

THE INTERSTATE COMMERCE COMMISSION,
By A. G. SAFFORD, *Solicitor.*

Order.

Upon the filing of the foregoing petition it is ordered that the prayer of the petition be granted and that Henry Fink, of Knoxville, in the State of Tennessee, and Samuel Felton and Charles M. McGhee and S. S. Spencer, of New York, in the State of New York, receivers and managers of the East Tennessee, Virginia & Georgia railway; D. H. Chamberlain, of Charleston, in the State of South Carolina, receiver and manager of the South Carolina railway, and
S. M. Felton, of Cincinnati, in the State of Ohio, receiver
131 and manager of the Cincinnati, New Orleans and Texas Pacific railway, are hereby made parties defendant in the above-entitled cause. Service of the pendency of said cause and this order shall be made upon said persons by delivering to each a true and attested copy of the original petition on or before the fifth day of August, 1893, and said persons are hereby required to make answer to said petition the same as if they were original parties to the same, on or before the 20th day of Augnst, 1893.

Done in court this 26th day of July, 1893.

D. M. KEY, *Judge.*

And afterwards, to wit, on the 28th day of July, 1893, there was filed in the office of the clerk of said court certain interrogatories to be propounded to Sol. Haas, J. M. Culp and others, which said interrogatories are clothed in the words and figures following, to wit:

Interrogatories to be Propounded to Sol. Haas, J. M. Culp, and Others.

(Endorsed:) Filed 28 Day of July, 1893. Henry O. Ewing, Deputy Clerk.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE E. T., V. & G. R'Y Co. and Others. } In Equity. No. —.

Now pending on the equity side of the circuit court of the United States for the southern division of the eastern district of Tennessee, at Chattanooga.

Interrogatories filed by respondents upon which to take the evidence of the following witnesses to be read on the trial of the above-named cause on behalf of said respondents, viz: Sol. Haas, Washington, D. C.; J. M. Culp, Washington, D. C.; Thos. Pinckney, 217 Broadway, N. Y.; W. L. Guillaudeau, pier 26, North river, N. Y.; W. C. Bullitt, Roanoke, Va.; T. S. Davant, Roanoke, Va.; Edwin Fitzgerald, Knoxville, Tenn.

Int. 1.

Please state your name, residence and occupation.

Int. 2.

State for what length of time you have followed such occupation.

132 Int. 3.

State about what proportion of the freights, which pass over your road destined for Nashville, Tenn., are routed via Chattanooga.

Int. 4.

Explain by what other routes such freight is routed.

Int. 5.

State the charges on such Nashville freights, via Chattanooga, and via other routes.

Int. 6.

Explain the advantages to shippers by the route via Chattanooga over the other routes, if any.

Int. 7.

What are the reasons why the charges via the Chattanooga route cannot be increased, if such be the fact?

Int. 8.

What effect has water navigation on the various routes other than via Chattanooga on the price and amount of freights, by the latter routes?

Int. 9.

What are the present charges on the various classes of freights to Chattanooga?

Int. 10.

Are such charges reasonable, and if so, upon what bases and reasons?

Int. 11.

Could such rates be lowered to Chattanooga so as to leave a reasonable profit to the common carriers, and if not, why?

Int. 12.

Are the rates of freight to Nashville via Chattanooga, as at present charged, reasonable, and if so, for what reasons?

Int. 13.

State any other fact within your knowledge, material to the issues in this case.

W. A. HENDERSON,
Sol'r for Respondents.

133 And afterwards, to wit, on the 14th day of August, 1893, there were filed in the clerk's office of said court certain cross-interrogatories to be propounded to Sol. Haas, J. M. Culp and others, which said cross-interrogatories are clothed in the words and figures following, to wit:

Cross-interrogatories to be Propounded to Sol. Haas, J. M. Culp, and Others.

(Endorsed:) Filed 14 Day of Aug., 1893. Henry O. Ewing, Deputy Clerk.

INTERSTATE COMMERCE COMMISSION
vs.
EAST TENNESSEE, VIRGINIA AND GEORGIA Railroad Company *et al.* } In Equity. No. —.

Now pending on the equity side of the circuit court of the United States for the southern division of the eastern district of Tennessee at Chattanooga.

Cross-interrogatories filed by petitioner to interrogatories filed by respondents, upon which to take the evidence of the following witnesses to be read on the trial of the above-named cause, namely: Sol. Haas, Washington, D. C.; J. M. Culp, Washington, D. C.; Thomas Pinkney, 217 Broadway, New York; W. L. Guillaudeau, pier 26, North river, New York; W. C. Bullitt, Roanoke, Va.; T. S. Davant, Roanoke, Va., and Edwin Fitzgerald, Knoxville, Tenn.

Cross-interrogatory No. 1. Is the railroad or steamship line with which you are connected a defendant in this case?

Cross-interrogatory No. 2. State the carriers and route or routes

by which traffic over your road or line reaches Chattanooga and Nashville from eastern cities, if any such traffic is consigned over your road or line; and state the distance over each of said routes.

Cross-interrogatory No. 3. State in tons the amount of freight carried over your road or line during the year ending June 30, 1892, which was destined to Chattanooga from eastern cities; what was the amount in tons of such freight destined to Nashville; and also give such tonnage to Chattanooga and Nashville for the year ending June 30, 1893. If necessary to compile these statements in order to answer this cross-interrogatory let your answer be so framed as to make such statements to be furnished within a reasonable time, a part thereof.

134 Cross-interrogatory No. 4. State approximately how in amount the tonnage which passes over your road or line as shipments from eastern cities to Chattanooga compares with the tonnage of such shipments passing over your road to Nashville.

Cross-interrogatory No. 5. How are the through rates in which your road or line participates as part of through routes from New York to Chattanooga and Nashville divided between the carriers. State the division or proportion received by each carrier in each route, and if the division is on a mileage basis state the number of miles allowed each carrier.

Cross-interrogatory No. 6. What are the rates per ton per mile on first-class traffic by each of these routes from New York to Chattanooga and Nashville, respectively.

Cross-interrogatory No. 7. Does your road or line engage at through rates in the carriage of property from any eastern city through Chattanooga or Nashville or both to points beyond Nashville, for instance, Kansas City, St. Louis, Cairo, Hickman, Memphis, Topeka, Leavenworth, Galveston and Fort Worth and, if so, at what rates on first-class traffic and at what rate per ton per mile and describe the routes.

Cross-interrogatory No. 8. Do not the all-rail routes via short lines from eastern cities through Cincinnati to Nashville actually control rates to the latter point via Chattanooga to the exclusion of any other method of routing.

Cross-interrogatory No. 9. If the routes which reach Nashville via Chattanooga should retire from taking Nashville traffic, in your opinion would freights destined for Nashville from eastern cities go to that point by water or by rail?

Cross-interrogatory No. 10. Do you of your own knowledge know of any through shipments of important amounts of traffic being shipped from eastern cities to Nashville by rail lines to Cincinnati, there transferred to boat for Paducah and there again transferred to boat for Nashville. If so when and under what conditions were such shipments made and to what classes did such traffic belong?

Cross-interrogatory No. 11. Does each road, line or route which reaches Chattanooga, Nashville and other important points in the South make rates to those points independently; if not, state explicitly how they are made.

Cross-interrogatory No. 12. Name the carriers, if any,
135 which do not participate in the carriage of traffic to Chattanooga from eastern cities that have a voice and vote in the making of rates to that point from eastern cities; and also name such carriers who so act with respect to Nashville rates.

Cross-interrogatory No. 13. Consult the rate sheets showing freight charges from eastern cities to points on the routes to Chattanooga and Nashville of which your road or line is a part and state what points, if any, which are situate on these routes a less distance from said eastern cities than Nashville or Chattanooga are charged higher rates than those in effect to Nashville or Chattanooga, or both, as the case may be.

Cross-interrogatory No. 14. Consult the rate sheets which apply to Nashville through Cincinnati, and state what points nearer Cincinnati than Nashville, if any, are charged higher rates from eastern cities than those in effect from said cities to Nashville. Make the same statement with reference to points between Chattanooga and Cincinnati.

Cross-interrogatory No. 15. What are the distances by short lines from Cincinnati to Nashville and Chattanooga respectively?

Cross-interrogatory No. 16. Taking the routes through Cincinnati to Nashville and Chattanooga in your opinion is the difference in rates from eastern cities to Nashville and Chattanooga (which difference is 23 cents on first-class articles) warranted by the difference in distance?

Cross-interrogatory No. 17. Can you say positively that the reduction of the rates from eastern cities to Chattanooga would result in substantial loss of revenue to carriers to that point?

Cross-interrogatory No. 18. Might not such reduction to Chattanooga result in such increase of business to the carriers as would nearly, if not fully, make up for the reduction?

Cross-interrogatory No. 19. In making rates to important points in the South like Atlanta, Chattanooga, Nashville, etc., you regard them as competitive points, do you not?

Cross-interrogatory No. 20. Please explain what proportion of the freights you have referred to in answer to direct interrogatory number three come from Boston, New York, Baltimore, Philadelphia, or other eastern seaboard cities.

Cross-interrogatory No. 21. Please state the charges upon each of the classes of freight, first, second, third, fourth, fifth and sixth, to
136 Nashville via Chattanooga by the line which your road or the corporation you represent is a part, and also the charges upon the same classes of freight, by the said line to Chattanooga.

Cross-interrogatory No. 22. Please state the distance from each of the cities above named, Boston, New York, Baltimore and Philadelphia, by your line to Chattanooga, and the distance from each of the said cities, by said line to Nashville.

Cross-interrogatory No. 23. Please state the distance from each of the said cities to Nashville by way of Cincinnati and the Ohio and Cumberland rivers to Nashville.

Cross-interrogatory No. 24. If you have stated that the charges to Nashville upon freight over your line could not be increased, state and explain fully why they could not be, and state also whether in your opinion the charges to Chattanooga might be decreased. If you say they could not explain fully why they could not.

Cross-interrogatory No. 25. If you state that water transportation has any effect upon rates to Nashville from any of the eastern seaboard cities state fully by what route freight can be shipped to Nashville and give water transportation any control over or influence upon rates that would not in like manner enter into and affect rates to Chattanooga. If you say that freight can be shipped to Nashville by any such route or routes state whether it actually is shipped by such route or routes in such quantities or amounts as to render the competition of such routes of any controlling force or influence.

Cross-interrogatory No. 26. What time is consumed in delivery of freight from Boston in Nashville by the route of which your line is part, via Chattanooga?

What time is required for delivery of freight from New York in Nashville by same route?

What time is consumed in delivery of freight from Philadelphia in Nashville by same route?

Cross-interrogatory No. 27. What time would be required for the delivery of freight from each of the above-named cities respectively by way of Cincinnati and the Ohio and Cumberland rivers, in Nashville?

Cross-interrogatory No. 28. If you cannot answer the two interrogatories, numbers 26 and 27, as to time precisely and definitely, do the best you can by giving the approximate time required for delivery in each case suggested.

Cross-interrogatory No. 29. What effect, if any, would the difference in time which you have described have upon the efficiency of the respective routes for freight carriage and profit earnings?

137 Cross-interrogatory No. 30. What advance upon the present rates to Nashville by your route—via Chattanooga—would probably result in a change by Nashville merchants to the use of the Cincinnati and Ohio and Cumberland Rivers route for general shipping despite the discrepancy in mileage and the increased time consumed in the shipment of freights by the latter route?

Cross-interrogatory No. 31. Are not the rates to Nashville an equal prorate of the regular rates of the trunk lines to Cincinnati and Louisville, extended over the Louisville and Nashville railway to Nashville?

Cross-interrogatory No. 32. Are not the rates to Chattanooga a large advance upon the trunk-line rates to Cincinnati and Louisville with the excess charges extended over the East Tennessee, Virginia and Georgia railway and the Cincinnati Southern railway to Chattanooga?

Cross-interrogatory No. 33. If you say in answer to direct interrogatory No. 10 that the charges upon the various classes of freight to Chattanooga are reasonable, state whether or not the rates to Nashville pay the carriers or not. If you say that the rates to

Nashville impose a loss upon the carriers, state what per cent. of loss they suffer by reason of them.

Cross-interrogatory No. 34. What do you mean by the term "a reasonable profit to the common carrier," as used in answer to direct interrogatory No. 11? What do you consider a reasonable profit to the common carrier, and how do you arrive at the result of profit or loss to the carrier as you have used the term in your said answer?

H. M. WILTSE,
Solicitor for Complainant.

And afterwards, to wit, on the 14th day of August, A. D. 1893, the answer of S. M. Felton, receiver, was filed in the clerk's office of said court, which said answer is clothed in the words and figures following, to wit:

Answer of S. M. Felton, Receiver.

(Endorsed:) Filed 14th Day of Aug., 1893. Henry O. Ewing, Deputy Clerk.

138 The United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE EAST TENNESSEE, VIRGINIA & GEORGIA Railway Company *et al.* } In Equity. No. 384.

Answer of S. M. Felton, rec'v'r Cincinnati, New Orleans & Texas Pacific R'y Co.

S. M. Felton, receiver of the Cincinnati, New Orleans & Texas Pacific Railway Company, by way of answer, says that on the 18th of March, A. D. 1893, he was duly appointed and qualified as receiver of said railway company by the circuit court of the United States for the southern district of Ohio; that he is now engaged in the operation of the line of railway of said company as such receiver under orders of said court, and further answering, he says that he adopts as his answer the allegations of the answer of the Cincinnati, New Orleans & Texas Pacific Railway Company filed herein.

CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC R'Y CO.
S. M. FELTON, *Receiver.*

STATE OF NEW YORK, }
City and County of New York. }

S. M. Felton, being first duly sworn, makes oath and says that the allegations of the foregoing answer are true as he verily believes.

Sworn to before me and subscribed in my presence this 7th day of August, A. D. 1893.

[SEAL.]

S. F. SULLIVAN,
Notary Public, Kings County.

Certificate filed in New York county.

And afterwards, to wit, on the 17th day of August, A. D. 1893, an entry was made upon the journal of said court, which said entry is clothed in the words and figures following, to wit:

139 Journal "C," page 521, August 17, 1893.

INTERSTATE COMMERCE COMMISSION
vs.
THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILWAY COMPANY *et al.*

In this cause, an order having been previously made making Charles M. McGhee, Samuel Spencer and Henry Fink, receivers, parties, and service having been duly made upon the said Charles M. McGhee and Samuel Spencer, but not upon Henry Fink, it is agreed by the undersigned solicitors as follows:

The appearance of the said Henry Fink is hereby entered generally, by his solicitor.

The answer filed by and for the East Tennessee, Virginia and Georgia Railway Company shall stand for and be treated as the answers of the said Charles M. McGhee, Samuel Spencer and Henry Fink, receivers, and the replication thereto shall be treated as the replication of complainant to each of said answers, and the cause shall proceed as to each and all of said receivers as if they had been originally made parties.

And afterwards, to wit, on the 24th day of August, A. D. 1893, a certain agreement of counsel was filed in the clerk's office of said court, which said agreement is clothed in the words and figures following, to wit:

Agreement of Counsel.

(Endorsed:) Filed Aug. 24, 1893. Henry O. Ewing, Deputy Clerk.

In the United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE EAST TENNESSEE, VIRGINIA & GEORGIA RAILWAY COMPANY *et al.*

In this case it is agreed that the evidence to be hereafter
140 taken at the option of the parties, may be taken either under the rules and regulations applicable to the State practice or to those applicable to the Federal court practice.

August 14th, 1893.

H. M. WILTSE.
W. A. HENDERSON.

And afterwards, to wit, on the 2nd day of April, A. D. 1894, an entry was made upon the journal of said court, which said entry is clothed in the words and figures following, to wit:

Journal "D," page 196, April 2, 1894.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE EAST TENNESSEE, VIRGINIA & GEORGIA RAILWAY COMPANY *et al.*

By consent of parties this cause is continued until the next term of the court.

And afterwards, to wit, on the 14th day of Nov., 1896, the joint and several answer of the Norfolk and Western R'y Co., and the Ocean Steamship Co. was filed in the clerk's office of said court, which said answer is clothed in the words and figures following, to wit:

Joint and Several Answer of the Norfolk & Western R'y Co. and the Ocean Steamship Co.

(Endorsed:) Filed Nov. 14, 1896. Henry O. Ewing, Clerk.

The joint and several answer of the Norfolk & Western Railway Company and the Old Dominion Steamship Company to the petition filed by the Interstate Commerce Commission against the East Tennessee, Virginia and Georgia Railway Company and others, in the circuit court of the United States, sitting in equity, within and for the eastern district of Tennessee.

I.

Respondents suppose it to be true that the East Tennessee,
141 Virginia and Georgia Railway Company was a corporation created, chartered and existing under and by virtue of the laws of the State of Tennessee, and that it had its principal office at Knoxville, in said State.

Respondents admit that the Norfolk & Western Railroad Company was a corporation, created, chartered and existing under and by virtue of the laws of the States of Virginia and West Virginia, and that it had its principal office at Roanoke, in the State of Virginia.

But respondents aver that under certain foreclosure proceedings on February 6th, 1895, F. J. Kimball and Henry Fink were appointed receivers of said Norfolk & Western Railroad Company in the States of Virginia, West Virginia, North Carolina and Maryland; and on February 7th, 1895, said Fink was appointed receiver of said road in Ohio.

Said Norfolk & Western railroad, with the exception of the Winston-Salem division from Roanoke, Virginia, to Winston-Salem, North Carolina, and that part of the Scioto Valley division extending from Coal Grove, Ohio, to Columbus, Ohio, was sold under said foreclosure proceedings on September 15th and 16th, 1896, and has been acquired by the Norfolk and Western Railway Company, a

corporation duly created, chartered and existing under and by virtue of the law of the State of Virginia, and said Norfolk & Western Railway Company, at midnight of September 30th, 1896, assumed the operation of the railroads and property so sold and has operated them ever since.

Respondents admit that respondent, The Old Dominion Steamship Company, is a corporation created, chartered and existing under and by virtue of the laws of the State of Delaware, and that it has its principal office at New York in the State of New York.

Respondents suppose it to be true that the other corporations named on pages 2 and 3 of the printed petition filed in this case were, at the time said petition was filed, corporations respectively created, chartered and existing under and by virtue of the laws of the several States, as therein set forth; and that they had their respective principal offices at the cities and in the States as therein set forth.

II.

Respondents admit that the defendants named in the petition filed in this case were, at the time of the committing of the so-called grievances specially mentioned in said petition, common carriers engaged in the transportation of persons and property over the lines owned by them respectively; some of said defendants were
142 and are so engaged wholly by railroad; some of them were and are so engaged wholly by water, and some of them were and are so engaged partly by water and partly by railroad.

Respondents deny that said defendants were or are under any common control or management. Respondents deny that there was or is any arrangement between respondents, or either of them, and any of their codefendants for the continuous carriage or shipment of persons or property, unless the issuance of through bills of lading or the making of joint through tariffs constitute such an arrangement.

Respondents admit that they were and are, in connection with certain of their codefendants, engaged in the transportation of persons and property between seaboard points in the States of Massachusetts, New York, Pennsylvania and Maryland on the one side, and certain points in the State of Tennessee on the other side.

III.

Respondents admit that on or about the 9th day of April, 1890, the Board of Trade of Chattanooga, claiming to be a mercantile society duly incorporated under the laws of the State of Tennessee, and having its principal office at Chattanooga in said State, filed a petition before the Interstate Commerce Commission for the alleged violation on the part of the defendants named in said petition of certain provisions of the act to regulate commerce; and that Exhibit A to the petition filed in this court is a correct copy of said petition filed before said commission.

Respondents admit that a copy of said petition, filed before said

commission, duly attested by the secretary of said commission under the seal of said commission, was duly forwarded by said commission to the Norfolk & Western Railroad Company and to respondent, The Old Dominion Steamship Company, as required by the 13th section of said act; and respondents suppose it to be true, that a similar copy was also forwarded to each of the other defendants named in said petition filed before said commission.

IV.

Respondents suppose it to be true that Exhibits B, C, D, E, F, G, H, I, K, L, M, N, O and P to the petition filed in this court are correct copies of the answers filed by the defendants therein named to the petition filed before said commission, and that said answers were filed on or about the dates mentioned in the petition filed in this court.

143 V.

Respondents admit that said matter came on for investigation and hearing before said commission on the 12th day of November, 1890; that said commission was duly and legally assembled for that purpose at Chattanooga, Tennessee; that said Chattanooga Board of Trade, said Norfolk & Western Railroad Company, and respondent, The Old Dominion Steamship Company, appeared at said hearing; and respondents suppose it to be true that some of their codefendants also appeared at said hearing, but as to which of them so appeared or had notice of said hearing respondents do not know nor do they have any information or belief.

VI.

Respondents deny that it was made to appear to the satisfaction of said commission at said hearing or at any other time, that either of these respondents or the said Norfolk & Western Railroad Company had violated any of the provisions of the act to regulate commerce, either as alleged in said petition filed before said commission, or otherwise.

Respondents deny that either of them has violated any of the provisions of said act.

Respondent, The Norfolk & Western Railway Company, is advised and insists that it is not responsible for violations of said act that may have been committed by the Norfolk & Western Railroad Company or by said receivers of the Norfolk & Western Railroad Company, if any violations were committed by them, or either of them, which, however, respondent, The Norfolk & Western Railway Company, denies upon information and belief.

Respondents deny that said commission, duly or legally, determined the matters or things that were in controversy or at issue between said parties; on the contrary, respondents are advised and so insist, that such determination of said matters and things as was made by said commission was and is illegal and void.

Respondents admit that said commission made a report in writing

in respect of said matters and things, and that Exhibit Q to the petition filed in this court in this case is a correct copy of said report.

Respondents admit that said report included certain so-called findings of fact upon which certain so-called conclusions of law were attempted to be based.

Respondents deny that said commission duly formulated
144 any order or notice in relation to the matters and things stated or charged in said petition filed before said commission.

Respondents deny that said order or notice as formulated by said commission was formulated in accordance with, or agreeably to, the requirements of the statute in such case made and provided.

Respondents deny that said order now remains in full force or effect, because they insist that it was and is illegal and void.

Respondents admit that said order has never been vacated, set aside, altered, modified, or changed in any respect whatever; and they admit that Exhibit "A" to the petition filed in this court in this case is a correct copy of said order; but respondents insist, as above stated, that said order is illegal and void.

Respondents admit that on or about January 13th, 1893, said commission caused a properly authenticated copy of its said report, and of said order and notice to be delivered to the Norfolk & Western Railroad Company, and to respondent, The Old Dominion Steamship Company; and respondents suppose it to be true that similar copies of said report, order, and notice were delivered to the other defendants in the petition filed before said commission.

VII.

Respondents deny that either of them has, at any time, been unmindful of its duty, or of any lawful decision or determination of said commission, or that it has ever disregarded or set at naught any lawful order or authority of said commission, or that it has ever willfully or knowingly or at all violated or disobeyed any lawful order of said commission.

VIII.

Respondents admit that prior to April 9th, 1890, and since that time said Norfolk & Western Railroad Company, and said receivers of said Norfolk & Western Railroad Company, and these respondents have participated in making, enforcing, and receiving higher rates for the transportation of freight from Boston, in the State of Massachusetts; New York, in the State of New York; Philadelphia, in the State of Pennsylvania; Baltimore, in the State of Maryland, and other eastern seaboard points to Chattanooga aforesaid than have been made and accepted by them at the same time for like transportation to Nashville, in the State of Tennessee.

145 Respondents admit that such freight has been transported by the same steamships and over the same railroads in the same direction; that the rates to Nashville from said eastern sea-

board cities and eastern seaboard points have been less than the rates from the same eastern seaboard cities and points to Chattanooga; that the distance via said steamships and railroads is less to Chattanooga than to Nashville; and that the shorter distance is included within the longer distance. But, notwithstanding said facts are true, respondents deny that either of them has been guilty of any violation of the 4th section of the act to regulate commerce; because it says, that the transportation of such freight from said eastern seaboard cities and points to Nashville, has not been and is not conducted under substantially similar circumstances and conditions as the transportation of like freight from said eastern seaboard cities and points via said steamships and railroads to Chattanooga; and for the following reasons, viz:

There are certain steamships and sailing vessels which ply between said eastern seaboard cities and points on the one side, and New Orleans, Louisiana, on the other side; certain steamboats and barges ply from New Orleans to Paducah, Kentucky, and beyond; and certain other steamboats ply from Paducah to Nashville, Tennessee, thus forming lines of all-water transportation from said eastern seaboard cities and points to Nashville. Such rates of freight can be obtained by said lines of water transportation from said eastern seaboard cities and points to Nashville as prevent the all-rail rates from said eastern seaboard cities and points to Nashville being materially increased above what they are at present. No such water competition exists at Chattanooga.

IX.

Lines of steamships ply between said eastern seaboard cities and Newport News, Virginia; and the Chesapeake & Ohio railroad extends from Newport News to Cincinnati, Ohio, and Louisville, Kentucky. Said steamships and railroad accept lower rates from said eastern seaboard cities to Cincinnati and Louisville, respectively, than can be obtained by any all-rail line; and they accept such rates to Cincinnati and Louisville, respectively, from said eastern seaboard cities as, added to prevailing rates from Cincinnati and Louisville, respectively, to Nashville, render it impossible to materially increase the all-rail rates from said eastern seaboard cities to Nashville above the present rates.

146 X.

The New York Central railroad, the Erie railroad, the Pennsylvania railroad and the Baltimore & Ohio railroad, which are known as the trunk lines, and which extend from said eastern seaboard cities to Cincinnati and Louisville, respectively, accept such rates from said eastern seaboard cities to Cincinnati and Louisville, respectively, as added to the prevailing rates from Cincinnati and Louisville, respectively, to Nashville, render it impossible to materially increase the all-rail rates from said eastern seaboard cities, via Chattanooga to Nashville, above the present rates.

XI.

Steamboats ply between Cincinnati and Louisville on the one side, and Evansville, Indiana; Paducah, Kentucky, and points beyond on the other side; and steamboats also ply between Paducah, Kentucky, and Nashville, Tennessee. There is also a line of boats plying between Evansville and Nashville, Tennessee, direct; and such rates can be obtained by said steamboats from Cincinnati and Louisville, respectively, to Nashville, as render it impossible to increase the all-rail rates between Cincinnati and Louisville, respectively, and Nashville, materially, above what they are at present.

XII.

Respondents aver that there are no regular lines of water transportation from said eastern seaboard cities to Chattanooga, and no effective competition by any water lines between said eastern seaboard cities and Chattanooga.

Respondents aver that there is no such all-water competition or all-rail competition, or part-rail and part-water competition between said eastern seaboard cities and Chattanooga, as exists between said eastern seaboard cities via Cincinnati and Louisville and thence to Nashville.

Respondents aver that there is no such water competition between Cincinnati, Louisville, Evansville, Paducah and New Orleans, on the one side, and Chattanooga on the other, as there is between said cities and Nashville.

XIII.

Respondents aver that the rates from said eastern seaboard cities to Chattanooga are just and reasonable in and of themselves;
147 and that said rates are just and reasonable as compared with the rates from said eastern seaboard cities to Atlanta, and other cities located similar to Chattanooga, and in the same section of country. Chattanooga has the same rates from said eastern seaboard cities as Atlanta, though Atlanta is 138 miles nearer than Chattanooga to the seacoast.

The rates from said eastern seaboard cities to Chattanooga are the same as rates from said eastern seaboard cities to Anniston, Alabama; Athens, Georgia; Birmingham, Alabama; Cedartown, Georgia; Columbus, Georgia; Dalton, Georgia; Montgomery, Alabama; Eufaula, Alabama; Rome, Georgia; Selma, Alabama; Meridian, Mississippi; Opelika, Alabama; and Talladega, Alabama. Respondents submit that it would not be just or reasonable to reduce the rates from said eastern seaboard cities to Chattanooga unless the rates were also reduced from said eastern seaboard cities to the other above-mentioned cities which have heretofore had the same rates as Chattanooga; and none of such cities were represented before the Interstate Commerce Commission, nor before this court, in this case.

XIV.

Respondents aver that the rates charged from said eastern seaboard cities to Chattanooga and to Nashville, respectively, do not constitute any unjust discrimination or undue preference in favor of Nashville against Chattanooga. The rates from said eastern seaboard cities to Cincinnati, Louisville and Evansville, respectively, are lower than from said eastern seaboard cities to Nashville; and upon freight transported from said eastern seaboard cities through Chattanooga to Nashville, and thence to Cincinnati, Louisville and Evansville, respectively, the distance is less from said eastern seaboard cities to Nashville than to Cincinnati, Louisville and Evansville, respectively.

The rates from said eastern seaboard cities to Cincinnati, Louisville and Evansville, respectively, are made by the trunk-line roads above referred to, which do not operate through Chattanooga, and which therefore would not be subject to the operation of the 4th section of the act to regulate commerce so far as traffic passing from said eastern seaboard cities through Chattanooga to Ohio River points is concerned. It would therefore be unjust and unreasonable to compel defendants to raise the rates from said eastern seaboard cities via Chattanooga to Nashville, and thereby
148 increase the disadvantage under which Nashville labors, as compared with cities located on the Ohio river, unless the rates from said eastern seaboard cities to said cities on the Ohio river were also raised.

XV.

Whenever Nashville merchants attempt to sell goods North or West, or on the upper or lower Cumberland river, they meet active competition from the merchants of Cincinnati, Louisville, Evansville, and other Ohio River cities, including even St. Louis, Missouri.

Said trunk-line rates from said eastern seaboard cities to Cincinnati, Louisville, and other Ohio River points are made relative to the rates which obtain between said eastern seaboard cities and Chicago; and the rates which obtain between said eastern seaboard cities and Chicago are controlled by the all-water line via the lakes, the Erie canal, and the Hudson river. It is practically impossible to increase the rates between said eastern seaboard cities and Cincinnati, Louisville and other Ohio River cities, without increasing in the same proportion the rates from said eastern seaboard cities to Chicago; and said rates cannot be materially increased from said eastern seaboard cities to Chicago above the rates which obtain upon the water line aforesaid.

The defendants in this case would be more than willing to increase the rates between said eastern seaboard cities and Nashville to those which now obtain between said eastern seaboard cities and Chattanooga if it were possible to do so; but owing to the competitive circumstances and conditions above stated, it is utterly

impossible to increase the rates from said eastern seaboard cities to Nashville materially above what they now are.

If, therefore, the order made by the Interstate Commerce Commission in this case is to be enforced, the only result will be to prevent respondents and their connections working through Chattanooga from participating in the traffic between said eastern seaboard cities and Nashville; it will injure respondents and said connections to the extent of many thousands of dollars per annum, and yet it will be of no benefit whatever to Chattanooga or its merchants.

Respondents having fully answered, pray to be hence dismissed with their reasonable costs, &c.

ED. BAXTER,
Solicitor for the Norfolk & Western Railway Company and the Old Dominion Steamship Company.

149 STATE OF NEW YORK, } ss:
County of New York, }

Personally appeared before me, Joseph J. Sullivan, a notary public, duly appointed and qualified in and for said State and county, Henry Fink, the president of The Norfolk & Western Railway Company, one of the above-named respondents, and made oath that the facts stated in the foregoing answer are true to the best of his knowledge, information, remembrance and belief, and in testimony that the foregoing is the answer of said company he affixed thereto the seal of said company.

[N. & W. SEAL.] HENRY FINK.

Attest: A. J. HEMPHILL, *Secretary.*

Sworn to and subscribed before me this 24th day of October, 1896.

[SEAL.] JOSEPH J. SULLIVAN,
Notary Public, Kings & N. Y. Co.

STATE OF NEW YORK, }
County of New York. }

Personally appeared before me, E. H. Patton, a notary public, duly appointed and qualified in and for said State and county, W. L. Guillaudeau, the vice-pres't & traffic manager of The Old Dominion Steamship Company, one of the above-named respondents, and made oath that the facts stated in the foregoing answer are true to the best of his knowledge, information, remembrance and belief; and in testimony that the foregoing is the answer of said company, he affixed thereto the seal of said company.

[Seal of Old Dominion Steamship Company.]

W. L. GUILLAUDEAU.

Sworn to and subscribed before me this 2nd day of November, 1896.

E. H. PATTON,
[SEAL.] *Notary Public No.* 66, *N. Y. County.*

And on the same day, to wit, the 14th day of November, 1896, a certain stipulation was filed in the clerk's office of said court, which said stipulation is clothed in the words and figures following, to wit:

Stipulation.

(Endorsed:) Filed Nov. 14, 1896. Henry O. Ewing, Clerk.

150 In the Circuit Court of the United States for the Eastern District of Tennessee.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE EAST TENNESSEE, VIRGINIA & GEORGIA RAILWAY Company *et al.* } In Equity.

In this case it is stipulated and agreed that after the petition was filed in this case, to wit: on February 6th, 1895, F. J. Kimball and Henry Fink, under certain foreclosure proceedings, were appointed receivers of the Norfolk & Western railroad in the States of Virginia, West Virginia, North Carolina and Maryland; and on February 7th, 1895, said Fink was appointed receiver of said road in Ohio.

Said road, with the exception of the Roanoke & Southern and the Scioto Valley division from Coal Grove to Columbus, was sold under said foreclosure proceedings September 15th and 16th, 1896, to the Norfolk & Western Railway Company, by whom possession was taken on September 30th, 1896.

It is further stipulated and agreed that this cause may be revived against said Norfolk & Western Railway Company and stand in the same plight and condition as it was in when said company acquired said Norfolk & Western railroad; but it is also agreed that said Norfolk & Western Railway Company shall have the right in its answer and at the hearing to rely upon all defenses that could have been made by said Norfolk & Western Railroad Company and that it shall also have the right to insist that it is not responsible for violations of law, if any may have been committed by said Norfolk & Western Railroad Company, or by the receivers thereof before said Norfolk & Western Railway Company acquired said railroad. It is further agreed that it has not complied with the order of the commission involved in this cause, but has knowingly acted in violation thereof since it has succeeded to the title and operation of said railroad.

This 6th day of November, 1896.

L. A. SHAVER,
Of Counsel for Interstate Commerce Commission.
ED. BAXTER,
Solicitor for Norfolk & Western Railway Co.

151 And afterwards, to wit, on the 20th day of November, A. D. 1896, an entry was made upon the journal of said court, which said entry is clothed in the words and figures following, to wit:

Journal "E," page 526, November 20th, 1896.

THE INTERSTATE COMMERCE COMMISSION
vs.
E. T., V. & G. R'Y CO. ET AL.

Pursuant to the stipulation of counsel, dated Nov. 6th, 1896, and filed in this cause, it is ordered and decreed by the court that this cause be revived against the Norfolk and Western Railway Company and stand in the same plight and condition as it was when said company acquired the Norfolk & Western railroad.

And afterwards, to wit, on the 16th day of June, A. D. 1897, a stipulation as to testimony was filed in the clerk's office of said court, which said stipulation is clothed in the words and figures following, to wit:

Stipulation as to Testimony.

(Endorsed:) Filed June 16, 1897. Crawford T. Johnson, Dep. Cl'k.

In the Circuit Court of the United States, Eastern District of Tennessee, in Equity, at Chattanooga, Tennessee.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE EAST TENNESSEE, VIRGINIA & GEORGIA R'Y CO. *et al.* } No. 384.

In this case it is stipulated and agreed by counsel for both parties, that the testimony of witnesses taken before the Interstate Commerce Commission in the case of The Board of Trade of Chattanooga *vs.* The East Tennessee, Virginia & Georgia R'y Co.
152 *et al.*, and such tariffs and other documents as were used by the commission as a basis for the report and opinion of the commission in said case, which was decided December 30th, 1892, may be certified by the secretary of the Interstate Commerce Commission, and filed and used in this case as evidence, subject to objection by either party as to the competency or relevancy of any part thereof; but all formal objections are hereby waived.

This 7th day of June, 1897.

ED. BAXTER,
Solicitor for Defendants as of Record.
L. A. SHAVER,
Solicitor for the Interstate Commerce Commission.

And afterwards, to wit, on the 22nd day of June, A. D. 1893, a stipulation of counsel was filed in the clerk's office of said court, which said stipulation is clothed in the words and figures following, to wit:

Stipulation of Counsel.

(Endorsed:) Filed June 22, 1897. Crawford T. Johnson, Dep. Cl'k.

In the Circuit Court of the United States for the Eastern District of Tennessee, in Equity, at Chattanooga.

INTERSTATE COMMERCE COMMISSION
vs.
EAST TENNESSEE, VIRGINIA & GEORGIA RAILWAY CO. ET AL.

Stipulation.

In the above case it is stipulated and agreed by counsel as follows: Either party on the hearing of the above-mentioned case in United States circuit court may use as evidence extracts from rates on file with the Interstate Commerce Commission extracts from annual reports filed by carriers with said commission and extracts from statistical or other data compiled by, or on file in the offices of the statistician and auditor of said commission, subject to objection by either party as to its competency or relevancy; but all formal objections are waived. Copies of such extracts as may be intended to be used by either party shall be certified by the
153 secretary of said commission, and furnished to the opposite party, who shall have fifteen days thereafter in which to file counter extracts or testimony.

June 19, 1897.

L. A. SHAVER,
Solicitor for Interstate Commerce Commission.
ED. BAXTER,
Solicitor for Defendants as of Record.

And afterwards, to wit, on the 9th day of August, A. D. 1897, the depositions of G. P. Biles, J. M. Brown, J. M. Culp, T. S. Darant, T. M. Gallagher, W. L. Guillanden, G. R. Knox, R. E. Lutz, Y. Vanden Berg, W. A. Winburn were filed in the clerk's office of said court, which said depositions are clothed in the words and figures following, to wit:

Depositions of G. P. Biles.
J. M. Brown.
J. M. Culp.
T. S. Darant.
T. M. Gallagher.
W. L. Quillanden.
G. R. Knox.
R. E. Lutz.
Y. Vanden Burg.
W. A. Winburn.

(Endorsed:) Filed August 9th, '97. Crawford T. Johnson, Dep. C.

In the Circuit Court of the United States for the Eastern District of Tennessee, at Chattanooga.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE EAST TENNESSEE, VIRGINIA & GEORGIA RAILway Company *et al.* } In Equity.

Frank Lyon, stenographer, 1317 F St., N. W., Washington, D. C.

154 In the Circuit Court of the United States for the Eastern District of Tennessee, in Equity, at Chattanooga, Tennessee.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE EAST TENNESSEE, VIRGINIA & GEORGIA RAILWAY Company *et al.* } No. 384.

In this case it is stipulated and agreed by counsel for the complainant and counsel for the defendants, that Frank Lyon, stenographer, shall act as a special examiner, with all the powers of such, to take the depositions of such witnesses in this case as may be produced before him by defendants.

It is further stipulated and agreed that he shall take the testimony of such witnesses in shorthand, and afterwards reduce the same to typewriting, and certify that his report of the testimony is full, true and correct. The signatures of the witnesses to their testimony, and all formal caption and certificate are expressly waived.

June 22nd, 1897.

L. A. SHAVER,
Counsel for Complainant.
ED. BAXTER,
Solicitor for Defendants.

Y. VAN DEN BURG, a witness called on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination.

By Mr. BAXTER:

Q. 1. State your name, age, residence and occupation.

A. Y. Van Den Burg; 41 years of age; residence, Louisville, Kentucky; traffic manager of the Louisville & Nashville Railroad Company.

Q. 2. How long have you been connected with the traffic departments of railroads in the United States?

A. Since 1880.

Q. 2½. In the report and opinion of the commission in this case, filed in December, 1892, it is stated that the rates from New
155 York via Cincinnati to Nashville, are made by arbitrary additions to the trunk-line rates from New York to Cincinnati

Is it correct or not to characterize the additions from Cincinnati to Nashville as arbitrary?

A. No, sir; the rates are not so made.

Q. 3. In dividing the rates from New York via Cincinnati to Nashville, how did the revenue per ton per mile received by the Louisville & Nashville railroad in 1892 from Cincinnati to Nashville compare with the revenue per ton per mile received by its connections north of Cincinnati?

A. After deducting cost of transfers, the earnings of the Louisville & Nashville railroad per ton per mile are approximately the same as the connections up to Cincinnati.

Q. 4. What do you mean by deducting the cost of transfers?

A. There are some transfers at New York, terminal expenses at New York and also the Ohio River transfer at Cincinnati.

Q. 5. And the transfers both at New York and at the Ohio river are deducted before dividing the balance between the Louisville & Nashville railroad and its connections between the Ohio river and New York?

A. Yes, sir.

Q. 6. Please explain when through rates from New York to Nashville via Cincinnati were first fixed and promulgated and state the reasons which governed in fixing those rates?

A. The first through rates from New York to Nashville were promulgated about 15 years ago, and in arbitrarily fixing those rates, they were made in relation to the rates from New York to the Ohio River crossings—Louisville and Evansville and Memphis, Tennessee.

Q. 7. Explain why it was necessary to make rates from New York to Nashville relative to the rates from New York to Memphis, Evansville and Louisville.

A. Because Nashville is a distributing point for the same territory for which Memphis, Evansville and Louisville are distributing points.

Q. 8. Explain how it is that lower rates are carried from New York via Cincinnati to Nashville than from New York via Cincinnati to Memphis.

A. The rates from New York to Memphis are so adjusted that the business is divided between the coastwise lines to New Orleans and the Mississippi River boats from New Orleans to Memphis, and the rail lines from New Orleans to Memphis; while the rates to
156 Nashville are so adjusted as to about absolutely control the entire movement to the rail lines into that point.

Q. 9. What proportion of the tonnage from New York and other eastern cities to Memphis reaches Memphis via New Orleans?

A. Over half of it.

Q. 10. What proportion of the tonnage from New York and other eastern cities to Nashville reaches that point via Cincinnati or other Ohio River points, and what proportion of it reaches Nashville via Chattanooga?

A. I do not know that I can give an estimate of that, but the vast majority of the traffic reaches Nashville via Chattanooga.

Q. 11. Suppose the rates from New York via Cincinnati to Nash-

ville were advanced so as to be made the same as the rates from New York via Cincinnati to Memphis, what effect would it have towards diverting the traffic to the steamboat lines from Evansville to Nashville?

A. It would divert a portion of the traffic to the trunk lines via Evansville and the direct boats from Evansville to Nashville.

Q. 12. State whether or not there is any competition as between Nashville on the south and Evansville and Louisville on the north, and what effect would be produced upon the commerce of Nashville as compared with the commerce of Louisville and Evansville of the rates from New York via Cincinnati to Nashville were advanced so as to be made the same as the rates from New York via Cincinnati to Memphis.

A. Nashville, as I have stated, is a strong point of competition, and in the same territory to which Evansville and Louisville distribute. The rates from New York are as follows:

Class	1.	2.	3.	4.	5.	6.	
To Louisville	75	65	50	35	30	25	(cents.)
To Evansville	83	72	55	39	33	28	"
To Nashville	91	78	60	42	36	31	"

Nashville is only 155 miles south of Evansville and 185 miles south of Louisville, and to advance the rates from New York to Nashville to the same as the rates from New York to Memphis, would deprive Nashville from competing in the territory in which it now competes with Evansville and Louisville.

157 Q. 13. By what lines were the rates from New York and eastern cities to Nashville primarily made, and by what lines were the rates from New York and eastern cities to Chattanooga primarily made?

A. The rates from eastern cities to Nashville were primarily made by the lines through the Ohio River crossings and the rates from the eastern cities to Chattanooga were made by the lines through Virginia gateways.

Q. 14. In adjusting the rates from New York and other eastern cities to Chattanooga, what southern cities were considered in connection with Chattanooga, and in adjusting the rates from New York and other eastern cities via Cincinnati to Nashville, what other cities near Nashville were considered in connection with Nashville?

A. In fixing the rates from eastern cities to Chattanooga, Rome, Dalton, Atlanta, Birmingham and other points were considered as competing with Chattanooga in the same territory, and in fixing the rates to Nashville, Louisville, Evansville and Memphis were considered as competing with Nashville in the same territory.

Q. 15. State how the through rates in force in 1892 from New York and Boston to Nashville were divided between the trunk lines and the Louisville and Nashville. Please state the actual divisions via the different lines on each of the classes.

A. Via the Empire and Union lines the rates from Boston to Nashville were divided as follows:

First class:

To Cincinnati	67.4
South	23.6
Through	91.

Second class:

To Cincinnati	57.4
South	20.6
Through	78.

Third class:

To Cincinnati	43.7
South	16.3
Through	60.

158 Fourth class:

To Cincinnati	29.9
South	12.1
Through	42.

Fifth class:

To Cincinnati	25.3
South	10.7
Through	36.

Sixth class:

To Cincinnati	21.5
South	9.5
Through	31.

From New York via the same line.

First class:

To Cincinnati	64.1
South	26.9
Through	91.

Second class:

To Cincinnati	54.6
South	23.4
Through	78.

Third class:

To Cincinnati	41.5
South	18.5
Through	60.

Fourth class:

To Cincinnati	29.4
South	13.6
Through	42.

159 Fifth class:

To Cincinnati	24.
South	12.
Through	36.

Sixth class:

To Cincinnati	20.4
South	10.6
Through	31.

From Boston via the New York Central, Lake Shore, & Michigan Southern and Big Four roads.

First class:

To Cincinnati	66.4
South	24.6
Through	91.

Second class:

To Cincinnati	56.5
South	21.5
Through	78.

Third class:

To Cincinnati	43.
South	17.
Through	60.

Fourth class:

To Cincinnati	29.4
South	12.6
Through	42.

Fifth class:

To Cincinnati..... 24.9
South..... 11.1

Through..... 36.

160 Sixth class:

To Cincinnati..... 21.1
South..... 9.9

Through..... 31.

From New York via the same route.

First class:

To Cincinnati..... 66.1
South..... 25.9

Through..... 91.

Second class:

To Cincinnati..... 55.5
South..... 22.5

Through..... 78.

Third class:

To Cincinnati..... 42.4
South..... 17.6

Through..... 60.

Fourth class:

To Cincinnati..... 28.9
South..... 13.1

Through..... 42.

Fifth class:

To Cincinnati..... 24.4
South..... 11.6

Through..... 36.

Sixth class:

To Cincinnati..... 20.7
South..... 10.3

Through..... 31.

161 Q. 16. State whether freight from New York and other eastern cities via Cincinnati to Nashville is carried under the same classification as the freight from New York and other eastern cities to Chattanooga? State how the official classification compares with the Southern Railway and Steamship Association classification.

A. The rates from eastern cities to Nashville are governed by the official classification. The rates from the eastern cities to Chattanooga are governed by the southern classification. It is impossible to make a comparison as between the official and the southern classifications, but when an effort was made some years ago to harmonize the two classifications and adopt a uniform classification the southern classification was considered one class below the official classification. In other words an article taking second class in the official classification was considered to be rated third class in the Southern Railway and Steamship classification.

Q. 17. State whether it was possible for the trunk lines and the Louisville & Nashville Railroad Company in 1892 to obtain any higher rates from New York and Boston to Nashville via Cincinnati than those that were charged then.

A. No, sir; I do not think it would have been possible to have charged higher rates without depriving Nashville of a considerable portion of its business.

Q. 18. The distance from New York via Bristol to Chattanooga is 901 miles; the rates from New York to Chattanooga in 1892 were reported by the commission as follows:

Class.....	1.	2.	3.	4.	5.	6.
	1.14	.98	.86	.73	.60	.49

State whether in your opinion said rates were reasonably low or unreasonably high, and give your reasons for any opinion you may express.

A. I think the rates were reasonsable in and of themselves for the reason that the rates from eastern cities to Chattanooga are fixed not higher than the rates to Rome, Dalton, Atlanta, Birmingham, and other points in that section, thus enabling Chattanooga to compete with points in that same territory.

Q. 19. Please select two average months in 1892 and state the number of tons of each of said classes of freight shipped from New York to Boston via Cincinnati destined to Nashville that were carried one mile by the Louisville and Nashville Railroad Company during these months.

Counsel for the commission objects to this question on the ground of irrelevancy.

162 A. I submit as Exhibit No. 1 to my deposition, statement, showing classes of freight (official classification) and commodities separate, shipped from Boston and New York via Cincinnati, Ohio, to Nashville, Tennessee, during the months of May and November, 1892; also showing number of tons carried one mile for

each class and commodity. Said statement was prepared at my request by Mr. Dickinson, auditor of receipts of the Louisville & Nashville Railroad Company.

Counsel for commission objects to the statement on the ground of irrelevancy and also because it is hearsay.

Q. 20. Who keeps the accounts of the Louisville & Nashville Railroad Company showing the numbers of tons of each of the classes of freight carried one mile?

A. Mr. Dickinson, the auditor of the company.

Q. 21. How many clerks has he in his employ?

A. He has a small army of them. I do not know how many there are.

Q. 22. How many books are required?

A. A great many books. I do not know how many.

Q. 23. Is he or not an officer subject to your orders for any information you may desire him to give?

A. He is.

Q. 24. Did you direct him to prepare the statement filed as Exhibit No. 1 to your deposition?

A. I did, sir.

Q. 25. And that statement is the result of what you directed him to compile?

A. Yes, sir.

Mr. SHAVER: You did not compile it yourself?

A. No, sir.

Mr. SHAVER: You did not see him compile it?

A. No, sir; the statement is certified to by him, however, as correct.

Mr. SHAVER: You do not of your own knowledge know of the correctness of those figures in that statement?

A. No, sir.

Q. 26. The commission, in its report and opinion in this case says that "under the tariffs now in force goods may be carried from the East through Chattanooga to Nashville and back through Chattanooga to points South and East and there sold at a lower price than Chattanooga merchants can sell for, and this appears to have actually occurred in many instances?"

Please state if you have caused to be prepared a statement showing the comparative combinations of rates on the articles that
163 actually moved from the East to Chattanooga and Nashville to stations on the Nashville, Chattanooga and St. Louis railway, Memphis and Charleston railroad, Southern railway (east of Chattanooga), Alabama Great Southern railway, Chattanooga Southern railway, Chattanooga, Rome & Columbus railway, Southern railway (south of Chattanooga), Western and Atlantic railway, and the Cincinnati, New Orleans & Texas Pacific railway. If so, please file said statement as Exhibit No. 2 to your deposition and state the result of the comparisons contained in it?

A. I will file it as Exhibit No. 2.

Q. 27. Did you cause that statement to be prepared?

A. Yes, sir, I had this statement prepared, taking at random eight of the commodities that regularly move from eastern cities to Chattanooga and Nashville, and also taking at random points of destination, preparing the statement just as the traffic moves, that is car-loads into Nashville and Chattanooga, where car-load rates are established, and less than car-load rates out. That statement shows not only that the commission's assertion that the rates south, east and west of Chattanooga can be made on Nashville combination lower than Chattanooga, is erroneous, but shows that even to points north of Chattanooga, the combinations figure in favor of Chattanooga. Take, for instance, a point between Chattanooga and Nashville on the Nashville and Chattanooga road, Decherd, which is 82 miles from Nashville and 68 miles from Chattanooga (pretty nearly half way) and even to that point out of eight combinations, four of them figure in favor of Chattanooga. The whole statement shows 168 combinations, only 12 of which base on Nashville and 156 on Chattanooga.

I file this statement in my deposition as Exhibit No. 2.

Cross-examination.

By Mr. SHAVER:

Q. 1. Did you prepare this Exhibit No. 2 yourself?

A. No, sir, I had it prepared by the chief clerk in the general freight office.

Q. 2. Did you see him prepare it?

A. No, sir.

Q. 3. Did you, of your own personal knowledge know the correctness of this statement Exhibit No. 2?

A. No more than any other statement that I have made up by the general freight office. I might add that the commission is in possession of the tariffs on file to check those off.

Counsel for the commission objects to this statement on the ground that it is hearsay and irrelevant.

164 Q. 4. You say, I believe, that out of a certain number of combinations, the majority are based on Chattanooga?

A. Out of 168, 156 based on Chattanooga.

Q. 5. The rates to these 156 stations are made up then of the through rates from New York to Chattanooga plus the local rates on from Chattanooga to these stations?

A. Yes, sir.

Q. 6. And the rates to the other stations are made up of the through rates to Nashville plus the locals back?

A. Yes, sir.

Q. 7. Back from Chattanooga or Nashville?

A. Yes, sir.

Q. 8. You stated in answer to direct interrogatory three (3) that the rates from New York via Cincinnati to Nashville were not made up of the through rate to Cincinnati plus an arbitrary on to Nashville?

A. Yes, sir.

Q. 9. Those rates are made up of the through rate to Cincinnati plus the regular through rate from Cincinnati to Nashville, are they not?

A. No, sir, if the rates were made as has been ascertained by the rates from New York to Cincinnati plus the arbitraries, enumerated, the rates would so divide, and the divisions which I have given in answer to one of the interrogatories shows that the rates do not so divide.

Q. 10. In dividing the aggregate through rate, the Louisville & Nashville railroad does not get the regular rate from Cincinnati to Nashville?

A. No, sir.

Q. 10½. Is it a lower rate?

A. Considerably lower.

Q. 11. What is the regular rate charged by the Louisville & Nashville railroad from Cincinnati to Nashville?

A. It is fifty-three cents on first class.

Q. 12. What is the proportion of the through rate from New York via Cincinnati to Nashville which the Louisville & Nashville railroad receives?

A. It varies.

Q. 13. It is different on different classes?

A. No, sir, it varies according to the route. For instance, its proportion from Cincinnati to Nashville on first-class business in connection with Union and Empire lines is 26.9. Its proportion south of Cincinnati on business from New York in connection with the New York Central and the Lake Shore and the Michigan Southern and Big Four roads is 25.9.

Q. 14. You stated that after deducting terminal expenses,
165 the rate per ton per mile from Cincinnati to Nashville was not higher than the rate per ton per mile for the preceding portion of the haul from New York to Cincinnati?

A. I testified that the revenue of the Louisville & Nashville Railroad Company per mile was approximately the same as that of the connections up to Cincinnati.

Q. 15. Is it not less?

A. It may be less in some cases where constructive mileage has been adopted east of Cincinnati.

Q. 16. The terminal expenses are at Cincinnati and New York, I believe?

A. Yes, sir, the Ohio River transfers at Cincinnati and the terminal expenses at New York.

Q. 17. Are not those terminal expenses deducted from the aggregate rate and not from the proportion of the rate going to the Louisville & Nashville railroad?

A. No, sir, the expenses are deducted from the total rate.

Q. 18. Are not rates, as a general rule, higher per ton per mile south of the Ohio than north or in trunk-line territory?

A. Yes, sir.

Q. 19. Are the rates in this instance from Cincinnati to Nashville an exception to that rule?

A. Well, I would have to figure on that, Mr. Shaver.

Q. 20. You also stated in your direct examination that the rates from New York to Memphis are higher than those to Nashville, I believe?

A. Yes, sir.

Q. 21. That is so, notwithstanding the fact that Memphis is on the Mississippi river and has all water communication with New York and other northeastern cities?

A. I explained that under the adjustment of rates to Memphis over half of the business is carried by coastwise lines through New Orleans, while under the adjustment of rates to Nashville more of the traffic is controlled by the rail lines into Nashville, and if the rates to Nashville are made the same as to Memphis, it would lead to a division of traffic between the water and the rail lines the same as is the case at Memphis.

Q. 22. You stated that a vast majority of the traffic from New York to Nashville passes through Chattanooga?

A. Yes, sir.

Q. 23. Could you state the proportion, approximately?

A. I could not.

Q. 24. You stated that if the rates to Nashville were as high as those to Memphis from New York and other northeastern
166 cities that the result would be that the traffic would be diverted at Cincinnati from the rail lines to the river and would be transported via the Ohio and Cumberland rivers to Nashville?

A. No, sir. I stated that to make the rates from New York to Nashville as high as from New York to Memphis, would lead to a diversion of the traffic from the Cincinnati route in connection with the Louisville & Nashville route to the Evansville crossing in connection with the direct steamers from Evansville to Nashville.

Q. 25. On the Cumberland river?

A. Yes, sir, the Ohio and Cumberland rivers.

Q. 26. How many rail, or rail and water lines are there from New York to Chattanooga?

A. The all-rail lines are the Pennsylvania railroad in connection with the Alexandria and Hagerstown routes; the Jersey Central and the Baltimore and Ohio in connection with the same routes; the Old Dominion Steamship Company and other crafts from New York to Norfolk and Portsmouth in connection with the rail lines from those ports; the direct steamer lines from New York to Charleston, Savannah and Brunswick in connection with the rail lines from those ports. There may be others.

Q. 26. Goods can also be transported from New York by water to New Orleans and thence up the Mississippi river to Memphis, and thence to Chattanooga by rail, can they not?

A. I do not know of any such movement.

Q. 27. It could be?

A. There might be upon some terms. I do not think there could be upon the adjustment of rates in force.

Q. 28. Are there not more rail lines or lines of transportation to Chattanooga than to Nashville?

A. No, sir, lines that compete to Chattanooga all compete for Nashville traffic as well.

Q. 29. How many railroads enter Nashville?

A. There are two lines—the Louisville and Nashville railroad and the Nashville, Chattanooga and St. Louis railroad.

Q. 30. How many railroads enter Chattanooga?

A. At Chattanooga there is the Western and Atlantic; the Cincinnati Southern; the Alabama Great Southern; the Nashville, Chattanooga and St. Louis railroad; the Chattanooga, Rome & Columbus; the Memphis and Charleston; the Chattanooga Southern.

Q. 31. There are more railroads then entering Chattanooga than enter Nashville, are there not?

A. Yes, sir.

167 Q. 32. Are you familiar with the navigability of the Cumberland river from Smithland where it empties into the Ohio to Nashville?

A. Yes, sir, I am familiar with it. They run regular boats between Paducah and Nashville; also between Evansville & Nashville, except possibly for short periods owing to exceptionally low water.

Q. 33. How many months in the year do those periods last?

A. There are only about sixty days in the year that those boats do not give us trouble. They are very light-draft boats.

Q. 34. Light-draft boats?

A. Yes, sir.

Q. 35. Is it navigable only for light-draft boats during the entire year?

A. It is only sixty days in the year that we do not have to contend with that Cumberland River competition, and sometimes considerably less than that.

Q. 36. When goods are shipped from New York via Cincinnati and thence via the Ohio and Cumberland rivers to Nashville, is not a transfer of the goods necessary at Cincinnati from the cars to the boat?

A. I do not think they handle any freight from New York to Nashville via Cincinnati and the Ohio river, but it is practicable. But the handling of traffic from New York to Evansville and thence by boats is entirely practicable and the railroads entering Evansville have got their rails up to the levee.

Q. 38. There is a transfer at Evansville from the cars to the boat?

A. I do not so understand, sir.

Q. 39. The cars themselves are transferred?

A. Yes, sir.

Q. 40. They can reach the river?

A. Yes, sir.

Q. 41. Put on board the boat?

A. Yes, sir.

Q. 42. Carried to Nashville?

A. Carried to Nashville by direct boat—a 400-ton boat. The cars are switched over the track connection to the water's edge.

Q. 43. You mean then that the cars are carried to the water's edge and the goods taken from the cars and put aboard the boat?

A. Yes, sir.

Q. 44. What is the distance from Evansville by the Ohio and Cumberland rivers to Nashville?

A. I do not know.

168 Q. 45. Can you approximate it?

A. No, sir.

Q. 46. What is the distance by direct rail lines from Evansville to Nashville?

A. 155 miles.

Q. 47. Are there regular through rates published and in force from New York to Nashville, by rail to Evansville and thence by the Cumberland river to Nashville?

A. No, sir; I explained in my direct testimony that under the present adjustment of rates from New York to Nashville, the Evansville route in connection with the Ohio and Cumberland rivers is not a practicable one, but that if the rates were advanced to the same figures as the rates from New York to Memphis it would be.

Q. 48. How long has it been since that route has been a practicable route from New York to Nashville?

A. I could not tell, sir.

Q. 49. What is the last through shipment that you know of from New York by rail to Evansville and thence by the Ohio and Cumberland rivers to Nashville?

A. As I explained, under the present adjustment of rates, the route through Evansville in connection with the Ohio and Cumberland rivers is not a feasible one, and I do not know when they took the last shipment.

Q. 50. Have you, of your own personal knowledge, ever known of through shipment from New York to Evansville by rail and thence by the Ohio and Cumberland rivers to Nashville?

A. No, sir.

Q. 51. In answer to the 18th direct interrogatory, you stated that the rates from New York and other northeastern cities to Chattanooga were reasonable in and of themselves, I believe?

A. Yes, sir.

Q. 52. You then went on and stated as a reason that those rates were the same as the rates to Rome, Birmingham, &c.

A. Yes, sir.

Q. 53. Do you not mean, then, that those rates are relatively reasonable as compared with the rate to Rome, Birmingham, &c.?

A. No, sir; I mean they are reasonable in themselves. Under the adjustment, Chattanooga has been able to hold its own in the same territory that Atlanta, Birmingham and Rome distribute to.

Q. 54. That would simply show that the rates were relatively reasonable, would it not?

A. Well, they are reasonable in relation to the rates to
169 Atlanta, Birmingham and Rome, but they are also reasonable in themselves. The reasonableness of them being established by the fact that Chattanooga has been able to hold its trade.

Q. 55. Did you state in reference to Exhibit No. 1, showing tonnage of freight, &c., from New York via Cincinnati to Nashville, why you selected the months of May and November, 1892?

A. They were considered average months.

Q. 56. Would the same data for other months of the year be larger or less in numbers from the data in Exhibit No. 1?

A. I think it is a fair average, sir.

Q. 57. The rate now in force from New York through Chattanooga to Nashville on first-class goods is 91 cents, is it not?

A. Yes, sir.

Q. 58. Does that rate pay operating expenses?

A. I believe it does.

Q. 59. Does it pay anything on the fixed charges such as interest on the investment, taxes, &c.?

A. I am hardly able to answer that question definitely. It is impossible to say whether a specific rate between any two points covers the cost of handling, but long experience has given us an idea as to what is fairly remunerative traffic, and I consider the business from New York to Nashville as such. I do not mean remunerative traffic, but traffic that pays over and above the cost of handling it.

Q. 60. The rate on first-class traffic from New York to Chattanooga is $1.14 per hundred pounds, is it not?

A. Yes, sir.

Q. 61. Is that rate to Chattanooga a reasonable rate in and of itself?

A. I have testified it was.

Q. 62. The haul from New York to Nashville is 151 miles longer than the haul to Chattanooga, is it not?

A. Yes, sir.

Q. 63. Is the 91-cent rate to Nashville reasonable in and of itself?

A. I think so.

Q. 64. Considered from the standpoint of the value of the service, is it not true that, if the rate to Nashville for a haul 151 miles longer than the haul to Chattanooga is reasonable in and of itself, the rate to Chattanooga for the shorter haul is unreasonably high—considered from the standpoint, as you understand, of the value of the service and cost of the service?

170 A. Considering the value of the service, I do not consider the rate from eastern cities to Chattanooga unreasonably high as compared with the rates from eastern cities to Nashville.

Q. 65. Would you consider the Chattanooga rate unreasonably high from the standpoint of the cost of service alone as compared with the Nashville rate, the haul to Nashville being 151 miles longer than the haul to Chattanooga?

A. I would not, sir.

Q. 66. How do you determine whether a given rate is reasonable or unreasonable?

A. If a point under any prevailing adjustment of rates is able to hold and develop its trade, I regard such an adjustment of rates as reasonable.

Q. 67. Is a rate reasonable which does not yield the carrier a proper remuneration over and above the cost of service?

A. I do not believe carriers make rates below the cost of transportation. I would consider such a rate as unreasonably low.

Q. 68. It would not, then, be a reasonable rate unless it yielded a proper remuneration over and above the cost of service?

A. It would be an unreasonably low rate.

Q. 69. Is not therefore the expense of cost of the service an element to be considered in determining the reasonableness in and of itself of a given rate?

A. I presume when you get rates down to a certain point that element would be considered a factor.

Q. 70. Does not the cost or the expense of the service of transportation depend largely or to some extent on the length of the haul, other things being equal?

A. Distance is a factor, but not a controlling one.

Q. 71. Other things being equal, is not the consumption of time greater, the greater the length of the haul?

A. Not necessarily. Through traffic for the longer haul is handled in less time than local traffic for the shorter haul.

Q. 72. I stated, other things being equal; that is, the same rate of speed for the long haul as for the short haul, is not the consumption of time greater, the greater the distance?

A. The consumption of time is a factor in the expense, of course, like everything else is.

Q. 73. Other things being equal, is not the consumption of fuel greater, the greater the length of the haul?

A. It is one of the items of expense.

171 Q. 75. Is not the wear and tear on locomotives, cars, tracks, road-bed, etc., greater, the greater the length of the haul?

A. That is another item of expense.

Q. 76. Is not the cost of keeping the road in repair or in good condition greater, the greater the length of the road other things being equal?

A. Yes, sir; the longer the road, the larger the total expense of maintaining the road.

Q. 77. Does it not require more locomotives, cars and more crews for the running of trains on a long road than on a short one, as a general rule?

A. That depends largely on the amount of traffic you have got to handle.

Q. 78. Other things being equal, does not distance add to the cost of building the road and are not, therefore, the fixed charges such as interest on the capital invested, greater, the greater the length of the road?

A. It costs more to build a five-hundred-mile road than a fifty-

mile road, and the fixed charges on a 500-mile road would be greater than on the 50-mile road, although the charges may not be greater per mile.

Q. 79. Is not the service more valuable to the shipper the greater the length of the haul? In other words will not a haul of 100 miles give a shipper markets for goods or produce which he will not have in a haul of fifty mile?

A. If you mean by that that a hundred-mile road to a shipper at Nashville for the distribution of his merchandise is of more value than a road only fifty miles in length for instance, that is true.

Q. 80. Are not the rates by all the rail lines from New York to Nashville the same?

A. Yes, sir.

Q. 81. Have not those rates been established by agreement between those lines?

A. I do not understand the rates from eastern cities to Nashville were originally made by agreement. Those rates were made by the trunk lines in connection with the Louisville & Nashville road from Cincinnati, and competing lines through other gateways adopted them.

Q. 82. Are not they maintained by agreement between the different lines?

A. I may say there is a decided understanding that these rates are the rates to be maintained.

Q. 83. Were not the existing rates to Nashville and Chattanooga and other points in the territory east of the Mississippi and south of the Ohio and Potomac rivers established and maintained by what was known as the Southern Railway and Steamship Association?

172 A. Originally, yes.

Q. 84. Those same rates are still in force, are they not?

A. They are still in force.

Q. 85. What is the name of the association which succeeded the Southern Railway & Steamship Association?

A. The Louisville & Nashville Railroad Company is not a member of it. The Southern States Freight Association succeeded the Southern Railway & Steamship Association. But since the decision of the Supreme Court in the Trans-Missouri case, that has been succeeded by the Southern Association, I believe it is the Southern.

Q. 86. The same rates are still maintained?

A. The same rates that were in effect to Nashville in 1892 are still in effect.

Q. 87. Also to Chattanooga?

A. Yes, sir.

Q. 88. How long have you been engaged in the railroad business in the territory east of the Mississippi and south of the Ohio and Potomac rivers?

A. Since 1882.

Q. 89. Has the greater charge for the shorter than the longer haul over the same line in the same direction, the shorter being included in the longer, ever to your personal knowledge been made in that

territory before or since the enactment of the act to regulate commerce in 1887, except in cases of competition in transportation to the longer-distance point?

A. So far as my knowledge goes, no exception has been made in making a greater charge for the shorter than for the longer distance under similar circumstances and conditions.

Q. 90. Is not competition in transportation the only ground or reason for making a higher rate for a shorter than for a longer haul over the same line in the same direction, the shorter being included in the longer?

A. Competition is a controlling factor.

Q. 91. Is there any other factor, and if so, state it?

A. No, sir; it is the controlling factor. I do not mean by that simply the competition between carriers, but also competition between markets.

Redirect examination.

By Mr. BAXTER:

Q. 1. Please give the name and address of the person who prepared the statement filed as Exhibit No. 2 to your deposition.

A. The statement, Exhibit No. 2, was compiled under the
173 direction of D. M. Goodwin, chief clerk to the general freight agent of the Louisville & Nashville road, with headquarters at Louisville, Kentucky.

Q. 2. How many clerks has he under him?

A. Some thirty or forty—possibly more.

Q. 3. How many tariffs had to be examined by those clerks in order to make that statement?

A. The tariffs of the lines into Chattanooga and into Nashville, and all the tariffs of the roads out of Nashville and out of Chattanooga.

Q. 4. I notice that said statement shows the rates from New York to 20 named stations, and that those rates are shown first on the Nashville combination and then on the Chattanooga combination. Explain what is meant by the term combination as used in that statement.

A. That means the established rate into Nashville and into Chattanooga and the local rates out.

Q. 5. He means out of Nashville and Chattanooga, respectively, to those twenty stations, respectively?

A. Yes, sir.

Q. 6. Please examine copy of the report made by the Louisville & Nashville Railroad Company to the Interstate Commerce Commission for the year ending June 30, 1893, here shown you (exhibiting report to witness) and from page 17 state the amount of dividends declared during that year.

A. $2,112,000.

Q. 7. Refer to page 19 of the same report and state the amount of interest paid by the said company upon its funded debt during said year.

A. $4,233,978.38.

Q. 8. Refer to page 45 of said report and state the amount paid by said company during that year for operating expenses.

A. $14,670,055.07.

Q. 9. Taking the rates allowed by the Louisville & Nashville Railroad Company upon its entire line of traffic, passenger as well as freight, to and from all points and upon all the classes, is it true that the revenue derived from that total line of rates would have to be sufficient to pay the amounts shown by that report to have been paid out for dividends, interest on the funded debt and operating expenses?

A. Yes, sir.

Q. 10. Now, suppose a rate upon a particular class of traffic between any two specified points is sufficient to pay its due proportion of operating expenses and interest upon the funded debt, but
174 is not sufficient to pay its proportions of those two items, and also its proportion of the dividends, would you consider the company justified in working for that rate?

A. Yes, sir; if it paid something over and above the cost of handling.

Q. 11. Now, suppose a rate upon a particular class of traffic between particular points is not sufficient to pay its proportion of dividends or its proportion of the funded debt, but will pay more than its proportion of the operating expenses, would you decline that traffic?

A. No, sir.

Recross-examination:

Q. 1. If a given rate to a given point is not high enough to pay operating expenses on the traffic to that point, does not a part of those operating expenses have to be borne by the traffic to other points?

A. We do not mean to take business that will not pay operating expenses.

Q. 2. If a given rate to a given point does not pay operating expenses, and also something on the dividends and fixed charges, would not a part of the burden of paying those dividends and fixed charges, which ought to be borne by the traffic to that point, have to be borne by the traffic to other points?

A. I think not, sir. Where freight pays the additional expense in handling it, it is no burden upon any other traffic.

Q. 3. I asked if the payment of dividends and of interest on investment, etc., which are known, I believe, as fixed charges, if a part of that burden which ought to be borne by the traffic to a given point, the rate on which does not pay any part of that burden, would it not have to be borne by the traffic to other points?

A. I cannot answer differently from what I have done; that is, that traffic that pays the additional expense of handling is not a burden upon those items.

Q. 4. As a general rule, ought traffic to all points bear a certain proportion of the burden of the fixed charges?

A. I fancy that is the way everybody would like to have it.
Q. 5. I asked if that ought not to be the case as a general rule?
A. Well, there are exceptions to all rules, and as I said, it would be a very desirable rule.
Q. 6. That would be equitable and just, would it not?
A. Yes, sir; it would be equitable and just; but the conditi-
175 tions under my previous answer are not inequitable.

Mr. SHAVER: That is all.

Redirect examination.

By Mr. BAXTER:

Q. 1. Do you know or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.
A. No, sir.

FORT MONROE, VA., *June 23rd*, 1897.

W. L. GUILLAUDEAU, a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination.

By Mr. BAXTER:

Q. 1. Please state your name, age, residence and occupation.
A. William L. Guillaudeau; 43; New York city; vice president and traffic manager of the Old Dominion Steamship Company.
Q. 2. How long have you been engaged in the transportation of freight traffic in the United States?
A. Nearly thirty years.
Q. 3. In what capacities?
A. All office duties from an office boy up to my present position, chiefly connected with the freight department of our company.
Q. 4. It appears from the report and opinion of the commission in this case, filed in December, 1892, that the rates from New York to Chattanooga are as follows:

Class	1	2	3	4	5	6
	1.14	.98	.86	.73	.60	.49

Please state whether, in your opinion, said rates were reasonably low or unreasonably high, and give your reasons for any opinion you may express.
A. I think the rates were reasonably low, measured by the service performed, the volume of traffic moved, and the rates to all other points similarly situated.
176 Q. 5. In the shipment of freight from New York to Nashville, and from New York to Chattanooga, what classifications apply?
A. At the present time, and I think for a long period of years to

Chattanooga, has been applied the Southern Railway & Steamship Association classification, now called the Southern States Freight Association classification, while to Nashville has been applied the trunk line or at present styled the official classification.

Q. 6. Which of these classifications is the higher? Please illustrate some of the differences between them, such as the rates on cotton piece goods, knit goods, coffees, etc.

A. The official classification rules decidedly higher, I should say. I speak of it as a whole. There are, of course, many instances where it zigzags backwards and forwards, one higher than the other, and one lower than the other, but as an instrument, the official classification is higher. For instance, cotton piece goods, that great class, which is embraced in that general term, the southern classification was for a period of years sixth class, is at present and I think for the past five or six, possibly seven years, has been fifth class on that line of goods, while the official classification was and is third class. Knit goods, I think, if my memory serves me right, are the same. Coffee and sugar and the line of goods of that sort which by the southern classification are sixth class in any quantity are fourth class in less than car-loads by the official. I have not had an opportunity and I cannot absolutely give you the full extract. I have made an extract of some of the articles which shows the difference, but it is a tremendous labor to have made an absolute exhibit of the difference between the two classifications. Yet I believe I am eminently safe in saying that the official classification rules materially higher than the southern.

Q. 7. State whether or not Chattanooga has certain lettered class rates and commodity rates from New York, which Nashville does not enjoy.

A. Chattanooga has lettered classes from A to H, if I remember right, which makes 13 or 14 classes with the six numbered classes, which Nashville has never used, never been incorporated in the official classification. Also, Chattanooga has, in common with other southern cities, had a line of so-called commodity rates, which all apply to the gross articles like groceries and what we might call heavy goods, which Nashville has not had.

Counsel for the commission objects to this testimony as irrelevant.

177 Q. 8. Are the rates on those lettered classes and the commodity rates referred to higher or lower than the rates that are charged on the same articles under the official classification, take for instance sugar, soap, glucose and molasses?

A. I think they are in every case.

Q. 9. Suppose they should be compelled to apply the same class rates to Chattanooga as obtain to Nashville and at the same time be compelled to apply the southern classification to the reduced scale of rates, what effect would it have upon the rates from New York to Nashville as compared with the rates from New York to Chattanooga?

A. In my view it would make the rates from New York to Chattanooga materially lower than the rates from New York to Nashville.

Cross-examination.

By Mr. SHAVER:

Q. 1. You stated that the rates from New York and Boston to Chattanooga on the six numbered classes were as follows:

Class	1	2	3	4	5	6
	1.14	.98	.86	.73	.60	.49

I believe, is that correct?

A. Those are the present rates and my record of the rates at the time.

Q. 2. Are not the rates from New York and Boston on a haul through Chattanooga to Nashville as follows:

Class	1	2	3	4	5	6
	.91	.78	.60	.42	.36	.31

by certain lines?

A. Yes, sir.

Q. 3. Are not those rates by all the lines from New York and Boston through Chattanooga to Nashville?

A. Yes, sir, I think so.

Q. 4. Is not the haul from New York and Boston through Chattanooga to Nashville 151 miles longer than the haul to Chattanooga?

A. I do not know the exact distance. It is longer by the distance that Nashville is from Chattanooga, yes.

Q. 5. You stated I think that the rates on certain commodities I think you mentioned sugar and molasses, etc., were lower to Chattanooga than to Nashville. Are those rates from New York, Boston and northeastern cities?

178 A. Yes, sir. I am more familiar with New York than Boston. When I answer yes as to Boston, it is generally on the proposition that the Boston rates are the same as New York. I have no interest in Boston traffic at all.

Q. 6. Why are the lettered classes or rates made lower to Chattanooga than to Nashville while the rates on the six numbered classes are made higher to Chattanooga than to Nashville? Why is that distinction made?

A. Well, I think it is a general proposition. It might be held to be for the same reason that the general scale of the southern classification is lower than the classification governing Nashville. I suppose it is the stress of competition between markets and a realization of what a force goes to make rates and classification that have brought it down. I do not know that I can answer more specifically.

Q. 7. That is a supposition—you suppose so?

A. It is my supposition founded on my experience in dealing with rates. I may say these rates have been in much the same condition for a good many years going back before I had the making of them and I answer as I understand the situation.

Q. 8. Are there not more rail lines reaching Chattanooga direct than run to Nashville?

A. More rail lines reaching Chattanooga direct? I do not think I understand the question. From where?

Q. 9. From northeastern cities.

A. No, I should think not.

Q. 10. What railroads run to Chattanooga, in all directions?

A. I have in my mind the old East Tennessee, Virginia & Georgia; now the Southern railway; the Western & Atlantic; the Memphis & Charleston. You will have to prompt me, I guess, I do not remember any more.

Q. 11. Can you state what railroads run to Nashville?

A. The Nashville, Chattanooga & St. Louis; I think the Louisville & Nashville. That is all I can think of.

Q. 12. Is there not as much competition in the transportation to Chattanooga of goods covered by the six numbered classes as there is in the transportation of the commodities you have named as being in the lettered classes?

A. That is a hard question to answer. The commodities in the lettered classes and the specific commodities that have been taken entirely outside of all classes, I should think would form the larger volume of the traffic and that might answer the question as to the competition in it. It is fair to say, however, that the enormous tonnage in the lettered classes, like meat and grain products,
179 does not move from the East. I think it might be fair to answer that there is as much competition in the lettered classes as there is in the others from the East.

Q. 13. Are the rates from New York to Nashville, which I have named, unreasonably low considered from the standpoint of the value and cost of the service on a haul from New York through Chattanooga to Nashville?

A. I think so.

Q. 14. Do those rates pay the fixed charges?

A. I cannot tell, sir; I do not know.

Q. 15. How do you determine whether a given rate is reasonable or unreasonable?

A. Well, naturally I think about rates based on our own rates, what may be called local business between New York and Norfolk.

Q. 16. Is a rate reasonable which does not yield a carrier a proper remuneration over and above the cost of service of carriage?

A. No, sir, it is not.

Q. 17. Is not the expense of the service of carriage an element to be considered in determining what is a reasonable rate?

A. I think so.

Q. 18. Does not the cost of the expense of the service of transportation depend largely or to some extent on the length of the haul, other things being equal?

A. I should say so.

Q. 19. Other things being equal is not the consumption of time greater, the greater the length of the haul?

A. Yes, sir.

Q. 20. Other things being equal, is not the consumption of fuel greater, the greater the length of the haul?

A. Yes, sir.

Q. 21. Is not the wear and tear on locomotives, cars, track and road-bed, greater, the greater the length of the haul?

A. I do not know. I have no experience with railroads, but I should say so.

Q. 22. Is not the cost of keeping the road in repair or in good condition, greater, the greater the length of the haul?

A. I cannot answer that for the same reason.

Q. 23. Does it not require more locomotives and cars and more crews for the running of trains on a long road than on a short road?

A. I make the same answer. You have in mind I am entirely a steamship man. I have no connection with railroads.

180 Q. 24. Does not distance add to the cost of building a road and are not therefore the fixed charges, such as interest on capital invested, greater, the greater the length of the road?

A. I should say it did, but I am not an expert on those questions, I do not know.

Q. 25. Is not the service more valuable to the shipper the greater the length of the haul? In other words will not a haul of 100 miles give a shipper a more extended market for his goods or produce than a haul of fifty miles?

A. Other things being equal it would.

Q. 26. Do you know whether or not the bulk of the traffic from New York to Nashville is hauled by the route through Chattanooga or by other routes?

A. I do not know, but my impression is that the large proportion of it moves through Chattanooga.

You asked me in a previous question if I considered that the rates to Nashville were unreasonably low, and I replied——

Q. 27. From the standpoint of the cost and value of the service.

A. I would like to say, I had in my mind at the time I answered the question, the comparison just between the 114 scale and the 91 scale, but to the extent that the 91 scale is based upon the higher classification, I would like to qualify it to that extent, that some of the rates would seem to be unreasonably low and some would be fair, about.

Q. 28. I spoke of the rates on the six numbered classes. Those you say, are unreasonably low?

A. I should like to qualify that by saying that where they are measured by the Southern States Freight Association classification, they would be unreasonably low.

Q. 29. The rates to Nashville?

A. Yes, sir.

Redirect examination.

By Mr. BAXTER:

Q. 1. Is it not true that the steamships operating from Boston and New York respectively to southeastern ports such as Charleston, Savannah and Brunswick, charge the same rates?

A. Yes, sir; within my knowledge, that is true. As between Boston and New York, and those points they charge the same rates. That is true as within my knowledge.

Q. 2. How much further is Boston by water than New York from Savannah?

181 A. I can only give you a guess. There is an angle there, you know. Now, merely as a guess, I might say, 200 miles running distance. What the prorating difference is, in the actual rate construction, I have no means of knowing, but it would be relatively less than the actual distance.

Q. 3. Then the steamship sailing from Boston to Savannah carries traffic two hundred miles further than steamships sailing from New York to Savannah, and you charge the same rate?

A. Yes, sir.

Q. 4. Then steamship rates are not regulated according to distance in all cases?

A. Rarely so, I think, sir.

Q. 5. Why is it that distance cannot be allowed to control in the making of rates?

A. I cannot better answer than by saying it is the circumstance of competition.

Q. 6. In other words, if the Boston steamships were to allow the New York steamships to carry the traffic to Charleston or Savannah at less rates, the traffic would move from New York instead of from Boston and the Boston steamships would get no business, is not that it?

A. That is the theory, exactly.

Q. 7. The Boston steamships, therefore, ignore the distance of two hundred miles, and ignore the additional cost of hauling it that distance, because competition forces them to do it?

A. I think I shall have to ask you to substitute "Boston line," because I cannot tell how the partners in the haul from Boston to the ultimate destination would stand. It is true of the operation as a whole. But that may be made up to the steamer in her division of the rate. But it is true they all take less because they have to.

Q. 8. Does a steamship company keep its accounts so as to show its operating expenses every year as a railroad company does?

A. I think, as a rule, steamship companies do not. Our company does. My reason for saying that, is, I think that most companies deal with their steamers as an entity. Their accounts are formulated, made up, each steamer with itself. With us, we do not. We just count a steamer the same as a railroad does a car and treat it as a whole, the ownership being strictly as a whole.

Q. 9. Your company then can tell what the operating expenses are for an entire year?

A. Yes, sir; but I would like to say here, we might call

182 operating expenses certain items which the railroads would not. We make a pretty simple division in our accounts what is expense and what is not.

Q. 10. Do you keep your accounts in such a way that you can

tell the cost to the Old Dominion Steamship Company to carry a barrel of cucumbers from Norfolk to New York?

A. No, sir.

Q. 11. Can you tell what it costs you to carry the entire vegetable traffic from Norfolk to New York as contradistinguished from other traffic?

A. No, sir.

Q. 12. Can you tell the difference between what it cost you to do the freight traffic from Norfolk to New York as contradistinguished from the freight traffic from New York to Norfolk?

A. No, sir; our accounts are not as refined as that; they are in the mass.

Q. 13. In making rates, then, upon particular articles or even upon particular classes, not knowing the cost of moving any particular article or any particular class of articles, you do not fix your rates in proportion to the cost?

A. No, sir; I cannot say that we do. We look to the return on the business as a whole and the expense upon the business as a whole to indicate the margin of safety or the reverse.

Q. 14. You have a general idea if a man offers you a cargo of vegetables here at Norfolk to carry to New York as to whether you can afford to take it at the terms he proposes?

A. Yes, sir.

Q. 15. And you accept it or decline it as you think you can or cannot make money?

A. Yes, sir.

Q. 16. Are you able to tell him or yourself as to whether the terms proposed are so many cents above or so many cents below the cost of doing the service?

A. We know with reasonable accuracy that if the entire vegetable business or the entire volume of business offering at a certain time, or at all times, were to be taken at such a figure, that it would be unremunerative, that there would be a loss, or conversely, that there would be a reasonable profit in it.

Recross-examination.

By Mr. SHAVER:

Q. 1. Steamship lines, both from Boston and New York to the South Atlantic ports, as a general rule, charge a higher rate the greater the distance, do they not?

183 A. I do not think I quite apprehend.

Q. 2. As a general rule does not your steamship line and the line from Boston to South Atlantic ports increase their rate as the distance increases?

A. Yes, sir; if you will allow me to qualify that. If the rates were on a normal basis, the distance carried would be a factor, but that, of course, is modified by the circumstances of competition.

Mr. SHAVER: That is all.

Redirect examination.

By Mr. BAXTER:

Q. 1. Do you know, or can you set forth any other matter or thing, which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause? If you — set forth the *sum* fully, and at large, in your answer.

A. No, sir.

FORT MONROE, VA., *June* 23, 1897.

T. S. DAVANT, a witness, on behalf of the defendants, having been duly sworn, testified as follows:

By Mr. BAXTER:

Q. 1. State your name, age, residence and occupation.

A. T. S. Davant; 47 years; Roanoke, Virginia; general freight agent, Norfolk & Western Railroad Company.

Q. 2. How long have you been connected with the railroad freight traffic departments in this country?

A. I entered the railroad service in 1865. I have been in charge of the traffic department of various roads since 1874.

Q. 3. It appears from the report and opinions of the commission in this case that the rates from New York and Boston to Nashville in December, 1892, were as follows:

Class	1	2	3	4	5	6
	.91	.78	.60	.42	.36	.31

What were the proportions received by the Norfolk & Western railroad on each of the classes of freight shipped from New York and Boston, via Hagerstown or Norfolk, destined to Nashville?

184 A. The proportions received by the Norfolk & Western railroad on each of the classes of freight shipped from New York and Boston destined to Nashville were as follows:

From New York via Norfolk:

Class	1	2	3	4	5	6
Cents per 100 lbs.	34	29.3	22.1	14.9	12.8	11.1

From Boston to Norfolk:

Class	1	2	3	4	5	6
Cts. per 100 lbs.	30.8	26.7	20.4	14.1	12.2	10.2

Q. 4. What did those proportions amount to per ton per mile on each of the classes?

A. These proportions amounted to per ton per mile on each of the classes:

Class	1	2	3	4	5	6
From N. Y., of a cent	1.67	1.44	1.08	.73	.63	.54
From Boston, of a cent	1.51	1.31	1.00	.70	.60	.50

Q. 5. What number of tons of each of said classes of freight shipped from New York and Boston via Hagerstown or Norfolk destined to Nashville were carried one mile by said road during the year 1892?

A. The number of tons of each of said classes of freight shipped from New York and Boston destined to Nashville carried one mile by said road during the year 1892 were:

From New York via Norfolk:

Class.....	1	2	3	4	5	6	Special commodities.
	687	192.5	528	716	195	1,203	1,217 tons.

From Boston:

Class.....	1	2	3	4	5	6	Special commodities.
	2,617	32.5	194	118	57	1,866	863 tons.

Q. 7. What amount of revenue was derived from said roads for the carriage of freight shipped from New York and Boston via Hagerstown or Norfolk destined to Nashville in 1892?

185 A. The amount of revenue derived by the Norfolk & Western road for the carriage of freight shipped from New York and Boston to Nashville during 1892 was:

From New York.....	$18,638 17
From Boston.....	17,575 01
A total of.....	$36,213 18

Q. 8. What was the estimated average cost per ton per mile for transporting all kinds of freight on the Norfolk & Western railroad in 1892?

A. The estimated cost per ton per mile for transporting all kinds of freight on the Norfolk & Western railroad in 1892, was .0537 cents or five and thirty-seven one-hundredths mills.

Q. 9. Did the proportion which said road received on the different classes of freight shipped from New York and Boston via Hagerstown and Norfolk destined to Nashville during 1892 exceed the estimated average cost per ton per mile on said road in 1892?

A. The average proportions which the Norfolk & Western railroad received on the different classes of freight shipped from New York and Boston destined to Nashville during 1892 exceeded the average cost per ton per mile on said road during 1892.

Q. 10. Did the proportions which said road received on the different classes of freight shipped from New York and Boston via Hagerstown and Norfolk destined to Nashville — 1892 exceed the additional cost to said road of the movement freight?

A. The proportions which the Norfolk & Western railroad received on the different classes of freight shipped from New York and Boston destined to Nashville in 1892 exceeded the additional cost to said road of the movement of the said freight.

Q. 11. What were the proportions received by said road on each

of the classes of freight shipped from New York and Boston via Hagerstown or Norfolk destined to Chattanooga?

A. The proportions received by the Norfolk & Western railroad on each of the classes of freight shipped from New York and Boston destined to Chattanooga, were:

Class	1	2	3	4	5	6
From New York	51.9	44.9	39.3	33.3	27.2	23.2
From Boston	45.5	39.5	34.7	29.6	24.5	20.2

186 Q. 12. What did those proportions amount to per ton per mile on each of the classes?

A. These proportions amounted to per ton per mile in cents on each of the classes:

Class	1	2	3	4	5	6
From New York	2.54	2.20	1.93	1.63	1.33	1.09 cent.
From Boston	2.23	1.93	1.70	1.45	1.20	.99 cent.

Q. 13. What number of tons of each of the said classes of freight shipped from New York and Boston via Hagerstown and Norfolk destined to Chattanooga were carried one mile by said road in 1892?

A. The number of tons of each of the said classes of freight shipped from New York and Boston destined to Chattanooga and carried one mile by the Norfolk & Western railroad in 1892 were:

Class	1	2	3	4	5	6	Special commodities.
From New York	502	209	186	137	211	288	237
From Boston	152	38	14	12	17	33	73.5

Q. 14. What amount of revenue was derived by said road in the carriage of freight shipped from New York and Boston via Hagerstown or Norfolk destined to Chattanooga in 1892?

A. The amount of revenue derived by the Norfolk & Western railroad by the carriage of freight shipped from Boston and New York to Chattanooga in 1892 was:

From New York	$16,835 57
From Boston	2,165 13
A total of	$19,000 70

Q. 15. What amount of revenue would have been received by said road in the carriage of freight shipped from New York and Boston via Hagerstown and Norfolk destined to Chattanooga in 1892, if said road had been compelled to accept the same rates as it is compelled to accept on freight shipped from New York and Boston via Hagerstown and Norfolk destined to Nashville?

A. The amount of revenue that would have been received by the Norfolk & Western railroad from the carriage of freight shipped from New York and Boston destined to Chattanooga in 1892, if

said road had been compelled to accept the same proportions
187 as it was compelled to accept on freight from New York and Boston destined to Nashville, is as follows:

From New York	$14,656 19
From Boston	1,756 26
A total of	$16,412 45

Q. 16. Said report and opinion shows that the rates from New York and Boston to Chattanooga were as follows:

Class	1	2	3	4	5	6
	114	98	86	73	60	49 cents.

State whether in your opinion said rates from New York and Boston to Chattanooga were just and reasonable or unjust and unreasonable and give your reasons for any opinion you may express?

A. The rates from New York and Boston to Chattanooga were in 1892 and are now—

Class	1	2	3	4	5	6
	114	98	86	73	60	49 cents.

I believe these rates were and are just and reasonable in themselves. They have been in effect for a long time and are the outgrowth of years of experience and careful adjustment. I have been intimately acquainted with the conditions surrounding the transportation of freight from the East to Chattanooga for 12 years and during all that time have never heard the reasonableness of the rates themselves questioned by any shipper.

Cross-examination:

Q. 1. On a haul from New York and Boston through Chattanooga to Nashville the rates are as follows, are they not, to wit:

Class	1	2	3	4	5	6
	91	78	60	42	36	31 cents.

A. Those are the rates from New York and Boston to Nashville via Chattanooga.

Q. 2. You also stated the rates to Chattanooga from New York and Boston to be—

Class	1	2	3	4	5	6
	114	98	86	73	60	49 cents.

did you not?

188 A. Yes, sir.

Q. 3. Is not the haul from New York and Boston via Chattanooga to Nashville 151 miles longer than the haul to Chattanooga?

A. Yes, sir.

Q. 4. You state that these rates to Chattanooga are just and rea-

sonable in themselves. Are the rates to Nashville named above also just and reasonable in themselves?

A. In my opinion the rates from New York and Boston to Nashville are unreasonably low.

Q. 5. How do you determine whether a given rate is reasonable or unreasonable?

A. The reasonableness of a rate is rather difficult thing to define. Of course we are supposed to be experienced in the making of rates, and we have to take into account a great many different things.

Q. 6. Is not the expense of service an element to be considered?

A. Necessarily.

Q. 7. Does not the cost or the expense of the service of transportation depend largely or to some extent on the length of the haul, other things being equal?

A. Yes, sir.

Q. 8. Name the rail lines which reach Chattanooga?

A. You mean the railroads which center at Chattanooga?

Q. 9. Yes, or pass through.

A. Well, the Southern railway; the Cincinnati, New Orleans and Texas Pacific railway; the Nashville, Chattanooga & St. Louis railway; the Memphis and Charleston railroad; the Alabama Great Southern railroad; the Chattanooga Southern railroad; the Chattanooga, Rome & Carrollton railway, and the Western & Atlantic railroad.

Q. 10. Name the roads which reach Nashville?

A. The Louisville and Nashville railroad and the Nashville, Chattanooga and St. Louis railway.

Q. 11. Were not the rates by all lines from northeastern cities to Chattanooga and Nashville made by agreement between the carrier parties to those rates as members of the Southern Railway & Steamship Association?

A. No, sir.

Q. 12. Are not the same rates charged by all the lines from northeastern cities to Nashville?

A. The rates from the East, from all eastern cities to Chattanooga and Nashville, which enter the cities of Chattanooga and
189 Nashville over the roads which I have named above are the same.

Q. 13. Are those rates not maintained by agreement between those roads, either express or tacit?

A. It is understood in a general way that those rates are maintained by all the roads that I have named.

Q. 14. Are not Nashville and Chattanooga in what was known as the territory subject to the jurisdiction of the Southern Railway & Steamship Association?

A. Chattanooga is but Nashville is not.

Q. 15. How long have you been engaged in the railroad business in the territory east of the Mississippi and south of the Ohio and Potomac rivers?

A. 32 years.

Q. 16. That territory east of the Mississippi and south of the Ohio

and Potomac rivers was what was known as the territory subject to the jurisdiction of the Southern Railway & Steamship Association, was it not?

A. For part of that time, yes. But that has not been continuously the case.

Q. 17. Has the greater charge for the shorter than the longer haul over the same line in the same direction, the shorter haul being included in the longer, ever, to your personal knowledge, been made in that territory before or since the enactment of the act to regulate commerce in 1887, except in the case of competition in transportation to the longer-distance point?

A. As a rule, competition is the controlling factor where higher rates are charged for the shorter than for the longer distances, but there are other conditions which also control in the matter.

Q. 18. In connection with competition?

A. Yes, sir.

Q. 19. Competition is invariably present in such cases?

A. Yes, sir.

Q. 20. That was before and since the passage of the act to regulate commerce?

A. Yes, sir; the same conditions exist.

Redirect examination.

By Mr. BAXTER:

Q. 1. Are not the rates from New York to Nashville made by the trunk lines to Cincinnati and thence by the Louisville & Nashville railroad to Nashville?

A. Yes, sir.

Q. 2. Do you regard the trunk-line rates from New York to Cincinnati as unreasonably low?

A. No, sir.

190 Q. 3. Are not the proportions which the Louisville & Nashville railroad receive from Cincinnati to Nashville on freight from New York the same per ton per mile as the trunk-line rates from New York to Cincinnati?

A. I cannot answer that question definitely, but it is my opinion that they are about on that basis.

Q. 4. Then if the trunk-line rates per ton per mile from New York to Cincinnati are not unreasonably low, do you think that the Louisville & Nashville proportions from Cincinnati to Nashville are unreasonably low?

A. No, sir.

Q. 5. Then if the rates from New York to Nashville are the sum off the trunk-line rates from New York to Cincinnati plus the Louisville & Nashville proportion from Cincinnati to Nashville, and the trunk-lines rates are not unreasonably low and the Louisville & Nashville proportions from Cincinnati to Nashville are not unreasonably low, how do you make the total rate from New York to Nashville unreasonably low?

A. If it were not for the combination of rates as you have referred

to via Louisville, the rates through Chattanooga to Nashville would be higher than they are at this time. In other words, if it were not for the controlling force of the combination of rates via Louisville, the rates to Nashville would be nearly or probably as high or higher than the present rates to Chattanooga.

Q. 6. Then the lines transporting freight from New York via Chattanooga to Nashville are forced to meet the rate which is made by the trunk lines from New York to Cincinnati and thence by the Louisville & Nashville or go out of business.

A. That is a fact, sir.

Q. 7. Please tell me what were the total number of tons moved one mile by the Norfolk & Western railroad in 1892?

A. 1,444,835,620 tons.

Recross-examination.

By Mr. SHAVER:

Q. 1. Can you state what proportion of the traffic from New York and other northeastern cities to Nashville goes by the route through Chattanooga?

A. No, sir; I cannot answer that.

Q. 2. Does not the bulk of such traffic go through Chattanooga to Nashville?

A. From eastern cities proper, that is to say, Baltimore,
191 Philadelphia, New York and Boston, the greater proportion of the business, in my opinion, moves via Chattanooga.

Mr. SHAVER: That is all.

Redirect examination.

By Mr. BAXTER:

Q. 1. Do you know of, can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. No, sir.

J. M. CULP, a witness on behalf of the defendants, having been duly sworn, testified as follows:

By Mr. BAXTER:

Q. 1. State your name, age, residence and occupation.

A. J. M. Culp; 48 years of age; Washington, D. C.; traffic manager Southern Railway Company.

Q. 2. How long have you been connected with the freight traffic of the United States?

A. Upwards of 26 years.

Q. 3. The report and opinion of the commission in this case states

that the rates from New York and Boston to Nashville at the date of said complaint, namely, December 30, 1892, were as follows:

Class	1	2	3	4	5	6	
	91	78	60	42	36	31	cents.

State what were the proportions received by the old East Tennessee, Virginia & Georgia Railway Company on each of the classes of freight shipped from New York and Boston via Bristol destined to Nashville.

A. The proportions received by the East Tennessee, Virginia and Georgia railway from Bristol to Chattanooga on the classes of freight named shipped from New York and Boston via Bristol to Nashville were as follows:

Class	1	2	3	4	5	6
From New York, cts. p'r 100 lbs..	19.9	16.7	12.9	8.7	7.4	6.5
From Boston, cts. p'r 100 lbs.....	18	15.6	11.9	8.2	7.2	6.3

192 Q. 4. What did those proportions amount to per ton per mile on each of the said classes?

—.

Class	1	2	3	4	5	6
From New York, p'r ton per mile..	1.64	1.36	1.08	.72	.61	.54
—, p'r ton per mile	1.40	1.29	.98	.69	.60	.52

Q. 5. What number of tons of each of said classes of freight shipped from New York and Boston via Bristol destined to Nashville were carried one mile by said road during the year 1892?

A.—

Class.	From New York.	From Boston.
1.....	168,674 tons.	633,556 tons.
2.....	70,906 "	7,986 "
3.....	127,766 "	47,190 "
4.....	179,564 "	28,556 "
5.....	35,332 "	16,214 "
6.....	297,418 "	357,434 "

Q. 6. What amount of revenue was derived by said road from the carriage of freight shipped from New York and Boston via Bristol destined to Nashville in 1892?

A. $21,622 [illegible]6.

Q. 7. What was the estimated average cost per ton per mile of transporting all kinds of freight over the East Tennessee, Virginia & Georgia Railway Company in 1892?

A. I am unable to state the estimated average cost per ton per mile over the different portions of the line, but the general average over the whole system from April 1st, 1891, to June 24, 1892, inclusive, was seventy-one one-hundredths (.71) of a cent per ton per mile.

Q. 8. Did the proportions which said road received on the differ-

ent classes of freight shipped from New York and Boston via Bristol destined to Nashville during 1892 exceed the estimated average cost per ton per mile on that portion of said road in 1892?

A. It did.

Q. 9. Did the proportions which said road received on the different classes of freight shipped from New York and Boston via Bristol destined to Nashville in 1892 exceed the additional cost to said road of the movement of the said freight?

A. There could be no doubt that it exceeded the average cost. The business was moved in through cars, handled in solid trains and unquestionably it exceeded the additional cost.

193 Q. 10. Said report and opinion shows that the rates from New York and Boston to Chattanooga were as follows:

Class	1	2	3	4	5	6
	114	98	86	73	60	49 cents.

What were the proportions received by said road on each of the classes of freight shipped from New York and Boston via Bristol destined to Chattanooga?

A. The proportions received by said road from Bristol to Chattanooga on each of the classes of freight shipped from New York and Boston via Bristol destined to Chattanooga were as follows:

Class	1	2	3	4	5	6
When from New York, cents per 100 lbs	30.9	26.7	23.4	19.8	16.2	13.2
When from Boston, cents per 100 lbs	27.	13.5	20.7	17.6	14.5	12.

Q. 11. What did those proportions amount to per ton per mile on each of the classes?

Class	1	2	3	4	5	6
When from New York, cts. per ton per mile	2.55	2.21	1.93	1.64	1.34	1.09
When from Boston, cts. per ton per mile	2.23	1.94	1.71	1.45	1.20	.99

Q. 12. What number of tons of each of said classes of freight shipped from New York and Boston via Bristol destined to Chattanooga were carried one mile by said road in 1892?

A.—

Class.	From New York.	From Boston.
1	121,242 tons.	36,542 tons.
2	50,336 "	9,680 "
3	47,674 "	3,388 "
4	33,154 "	2,904 "
5	52,514 "	4,114 "
6	72,116 "	8,228 "

Q. 13. What amount of revenue was derived by said road from the carriage of freight shipped from New York and Boston via Bristol destined to Chattanooga in 1892?

A. $11,276.56.

Q. 14. What amount of revenue would have been received by said road from the carriage of freight shipped from New
194 York and Boston via Bristol destined to Chattanooga in 1892 if said road had been compelled to accept the same proportions as it was compelled to accept on freight shipped from New York and Boston via Bristol destined to Nashville?

A. The revenue would have been $8,585.25.

Q. 15. What was the financial conditions of the East Tennessee, Virginia and Georgia railroad in 1892?

A. The annual report of the East Tennessee, Virginia and Georgia railway for the fiscal year from July 1st, 1891, to June 24th, 1892, inclusive, shows that there was an actual loss in operating the property so far as the freight traffic was concerned.

The total freight earnings were	$4,283,618 30
The proportion of the expenses assignable to freight traffic was	3,419,638 64
Leaving as net freight earnings	863,981 46
The amount of interest allotted to freight traffic was.	1,396,819 43
Thus leaving a deficit from freight operations amounting to	532,837 97

It is evident from this that with this loss of over half a million dollars, they could not have conceded a further reduction, a further reduction in rates would have added to the loss.

Q. 16. State what were the total number of tons of freight carried one mile by the East Tennessee, Virginia and Georgia railroad during the year 1892?

A. For the period from July 1st, 1891, to June 24, 1892, over the East Tennessee, Virginia and Georgia railroad all divisions except the Knoxville & Ohio, the number of tons hauled one mile was 482,171,704.

Q. 17. State whether or not in your opinion the above-mentioned rates from New York and Boston to Chattanooga were just or unjust, reasonable or unreasonable and give your reasons for any opinion you may express.

A. They were in my opinion certainly not unreasonably high. They were reasonably low. My reasons for this opinion are that the property moved freely on these rates; business was done and had been done under these rates at a profit; they were lower than the property could be shipped between the same points by any other means of transportation; and they were in line with the rates to Knoxville, Rome, Atlanta and Dalton and other points doing business in competition with this point.

Q. 18. Please name the carriers composing the various lines all rail or all water or part rail and part water that actually
195 and actively competed for traffic in 1892 between New York, Boston, etc., on the one side and Nashville on the other.

A. All rail from Boston to Nashville.

Star Union line via New York & New England railroad, Pennsylvania system and Louisville & Nashville railroad.

Erie Dispatch, via New York, New Haven and Hartford railroad, New York, Lake Erie & Western railway, New York, Pennsylvania & Ohio railroad, Louisville & Nashville railroad.

Great Eastern Dispatch via Boston & Maine railroad, Grand Trunk railway, Cincinnati, Hamilton & Dayton railway, Louisville & Nashville railroad.

Red line via Boston & Albany railroad, New York Central & Hudson River railroad, Lake Shore & Michigan Southern railway, Cleveland, Cincinnati, Chicago & St. Louis*ville* railway, Louisville & Nashville railroad.

White line via Boston & Albany railway, New York Central & Hudson River railroad, Lake Shore & Michigan Southern railway, Cleveland, Cincinnati, Chicago & St. Louis railway and the Louisville & Nashville railroad.

The Reading Dispatch, via the New York, New Haven & Hartford railway, Grand Trunk railway, Cincinnati, Jackson & Mackinaw railway, Louisville & Nashville railroad.

Lackawanna line via the Fitchburg railroad, the Delaware, Lackawanna & Western railroad, the New York, Chicago & St. Louis railway, the Cincinnati, Hamilton & Dayton railway, the Louisville & Nashville railroad.

Canada Southern line via Fitchburg railroad, West Shore railroad, Michigan Central railroad, Cincinnati, Hamilton & Dayton railway, Louisville & Nashville railroad.

Nickel Plate line via Fitchburg railroad, New York Central & Hudson River railroad, New York, Chicago & St. Louis railway, Cincinnati, Jackson & Mackinaw railroad, Louisville & Nashville railroad.

Blue line via New York, New Haven & Hartford railroad, New York Central & Hudson River railroad, Michigan Central railway, Cleveland, Cincinnati, Chicago & St. Louis railway, Louisville & Nashville railroad.

Interstate Dispatch, via New York, New Haven & Hartford railroad, Delaware & Hudson River Canal railroad, Cleveland, Cincinnati, Chicago & St. Louis railway, Louisville & Nashville railroad.

196 Richmond & Danville Dispatch via New York, New Haven & Hartford railroad, Pennsylvania railroad, Richmond & Danville railroad, Nashville, Chattanooga & St. Louis railway.

Atlantic Coast Dispatch via New York, New Haven & Hartford railroad, Pennsylvania railroad, Richmond & Hartford railroad, Pennsylvania railroad, Richmond, Fredericksburg & Potomac railroad, Georgia railroad, Western & Atlantic railroad, Nashville, Chattanooga & St. Louis railway.

Seaboard Dispatch via New York, New Haven & Hartford railroad, Pennsylvania railroad, Richmond, Fredericksburg & Potomac railroad, Seaboard air line, Western & Atlantic railroad, Nashville, Chattanooga & St. Louis railway.

Great Southern Dispatch via New York, New Haven & Hartford railroad, Pennsylvania railroad, Cumberland Valley railroad, Norfolk & Western railroad, East Tennessee, Virginia & Georgia railway, Nashville, Chattanooga & St. Louis railway.

The all-rail lines from New York to Nashville were:

Star Union line, via Pennsylvania system, Louisville & Nashville system.

Erie Dispatch via New York, Lake Erie & Western railroad, New York, Pennsylvania & Ohio railroad, Louisville & Nashville railroad.

Great Eastern line via Delaware, Lackawanna & Western railroad, Lake Shore & Michigan Southern railroad, Cleveland, Cincinnati, Chicago & St. Louis railway, Louisville & Nashville railroad.

Reading Dispatch via Lehigh Valley railroad, Grand Trunk railway, Cincinnati, Hamilton & Dayton railway, Louisville & Nashville railroad.

White line via New York Central & Hudson River railroad, Lake Shore & Michigan Southern railway, Cleveland, Cincinnati, Chicago & St. Louis railway, Louisville & Nashville railroad.

Lackawanna line via Delaware, Lackawanna & Western railroad, New York, Chicago & St. Louis railroad, Cincinnati, Hamilton & Dayton railway, Louisville & Nashville railroad.

Canada Southern line via West Shore railroad, Michigan Central railroad, Cincinnati, Hamilton & Dayton, Louisville & Nashville.

Nickel Plate line, via West Shore railroad, New York, Chicago & St. Louis railway, Cleveland, Cincinnati, Chicago & St. Louis railway, Louisville & Nashville railroad.

197 Blue line via New York Central & Hudson River railroad, Lake Shore & Michigan Southern railroad, Cleveland, Cincinnati, Chicago & St. Louis railway, Louisville & Nashville railroad.

West Shore line via West Shore railroad, New York, Chicago & St. Louis railway, Cleveland, Cincinnati, Chicago & St. Louis railway, Louisville & Nashville railroad.

Interstate Dispatch via New York, Lake Erie & Western railroad, New York, Pennsylvania & Ohio railroad, Louisville & Nashville railroad.

Midland line via New York Central & Hudson River railroad, Lake Shore & Michigan Southern railroad, Cleveland, Cincinnati, Chicago & St. Louis railway, Louisville & Nashville railroad.

Rail and water from Boston, Mass., to Nashville:

Continental line, Merchants' & Miners' Transportation Company, Baltimore & Ohio railroad, Baltimore & Ohio Southwestern railroad, Louisville & Nashville railroad.

Virginia, Georgia & Tennessee air line via Merchants' & Miners' Transportation Company, Norfolk & Western railroad, East Tennessee, Virginia & Georgia railroad, Nashville, Chattanooga & St. Louis railway.

Kanawha Dispatch via Merchants' & Miners' Transportation Company, Chesapeake & Ohio railway, Louisville & Nashville railroad.

Cumberland Gap Dispatch via Merchants' & Miners' Transportation Company, Norfolk & Western railroad, Louisville & Nashville railroad.

Savannah line via Ocean Steamship Company, Central Railroad & Banking Company of Georgia, Western & Atlantic railroad, Nashville, Chattanooga & St. Louis railway.

Paint Rock line via Merchants' & Miners' Transportation Company, Richmond & Danville railroad, East Tennessee, Virginia & Georgia railroad, Nashville, Chattanooga & St. Louis railway.

Atlantic Coast line via Merchants' & Miners' Transportation Company, Atlantic Coast line, South Carolina railway, Georgia railway, Western & Atlantic railroad, Nashville, Chattanooga & St. Louis railway.

Seaboard air line via Merchants' & Miners' Transportation Company, Seaboard air line, Western & Atlantic railroad, Nashville, Chattanooga & St. Louis railway.

Rail and water from New York to Nashville are as follows:

Savannah line via Ocean Steamship Company, Central
198 Railroad & Banking Company of Georgia, Western & Atlantic railroad, Nashville, Chattanooga & St. Louis railway.

Virginia, Tennessee & Georgia air line via Old Dominion Steamship Company, Norfolk & Western railroad, East Tennessee, Virginia & Georgia railway, Nashville, Chattanooga & St. Louis railway.

Kanawha Dispatch via Old Dominion Steamship Company, Chesapeake and Ohio railway, Louisville & Nashville railroad.

Cumberland Gap Dispatch via Old Dominion Steamship Company, Norfolk & Western railroad, Louisville & Nashville railroad.

Atlantic Coast line via Old Dominion Steamship Company, Atlantic Coast line, South Carolina railway, Georgia railroad, Western & Atlantic railroad, Nashville, Chattanooga & St. Louis railway.

Piedmont air line via Old Dominion Steamship Company, Richmond & Danville railroad, East Tennessee, Virginia & Georgia railroad, Nashville, Chattanooga & St. Louis railway.

Mallory line via East Tennessee, Virginia & Georgia railway, Nashville, Chattanooga & St. Louis railway.

Clyde line via South Carolina railroad, Georgia railroad, Western & Atlantic railroad, Nashville, Chattanooga & St. Louis railway.

I have not attempted to enumerate all of the lines that compete for this business but I have the important ones.

Q. 19. There are a number of cities in Georgia and Alabama that for many years have taken the same rail and water rates from New York and Boston, etc. Please state what would be the effect upon some of those cities if the rates from New York, Boston, etc., to Chattanooga should be reduced to the same as the rates from New York, Boston, etc., to Nashville, while the rates from New York, Boston, etc., to those cities should remain the same?

A. The effect would be to divert some of the traffic from those

points to Chattanooga—some of the traffic which those points enjoy and distribute would be distributed from Chattanooga.

Cross-examination.

By Mr. SHAVER:

Q. 1. What proportion of the traffic from New York and Boston and other northeastern cities goes by the route through Chattanooga to Nashville?

A. I cannot state the figures. There is a considerable proportion of it.

Q. 2. Does not the bulk of such traffic to Nashville go through by the route through Chattanooga?

199 A. I think not. Probably the bulk of light freights such as boots and shoes and dry goods, likely does go through Chattanooga but much the largest part of the heaviest freight goes through Cincinnati or Louisville.

Q. 3. You differ from Mr. Guilladeau, vice-president and general manager of the Old Dominion Steamship Company, and Mr. Vanden Burg, traffic manager of the Louisville & Nashville Railroad Company, on that point. They stated in their examination that the bulk of the traffic from New York and other northeastern cities to Nashville went by the route through Chattanooga. Is not their information on that subject likely to be as good as yours?

A. Mr. Van den Burg represents a line into Nashville and his information ought to be reasonably good, but I still maintain that the largest part of the heaviest goods, machinery and articles of that kind which frequently or usually are shipped in car-loads, goes the other way, through Cincinnati.

Q. 4. Name the roads which actually reach or touch Nashville?

A. The Louisville & Nashville railroad and the Nashville, Chattanooga & St. Louis railway.

Q. 5. All the lines then that you have named as running from New York and Boston to Nashville are formed by combinations with those two terminal carriers, the Louisville & Nashville and the Nashville, Chattanooga & St. Louis roads, are they not?

A. So far as the rail lines terminating in Nashville are concerned, yes.

Q. 6. I refer to lines from New York and Boston to Nashville?

A. I say, so far as rail lines terminating in Nashville are concerned, they all form combinations either with the Louisville & Nashville or the Nashville, Chattanooga & St. Louis railway.

Q. 7. Are not all the lines from New York and Boston to Nashville which you name in your answer to the 18th interrogatory made by combination with either the Louisville & Nashville or the Nashville, Chattanooga & St. Louis railroad, either as initial or terminal carriers?

A. Yes, sir, as named.

Q. 8. Name the railroads which actually reach or touch Chattanooga.

A. The Southern railway, the Cincinnati, New Orleans & Texas

Pacific railway, the Nashville, Chattanooga & St. Louis railway, the Memphis & Charleston railway, the Alabama Great Southern
200 railroad, the Chattanooga Southern, the Chattanooga, Rome & Columbus railway, the Western & Atlantic, which is a part of the Nashville, Chattanooga & St. Louis railway.

Q. 10. Cannot numerous lines from New York and Boston to Chattanooga be formed by combinations with these various roads which reach or touch Chattanooga?

A. Yes, sir.

Q. 11. If you go far enough around from the direct route the number of lines that can be formed by the different combinations is almost unlimited, is it not?

A. Well, a great many can be made.

Q. 12. In your direct examination you stated that the following rates from New York and other northeastern cities to Chattanooga were just and reasonably of themselves, to wit:

Class	1	2	3	4	5	6
	114	98	86	73	60	49 cents.

As one ground upon which you base that opinion, you stated that the traffic moved freely under those rates. Would you consider rates reasonable and just until traffic ceased to move under them, until they became prohibitory, in other words?

A. It would depend very much. A rate might be made from one point of production to a point of consumption for some reason, normal or abnormal at a very low rate, a rate which would control practically all the business of that class of goods into that town. Some other point in another direction served by some other road or line of railroads might have been doing the bulk of the business into this point of consumption and all of its trade might be diverted to this point of production by reason of these reduced rates from this new point of production and yet it would not follow that the rates from this old point of production were not just and reasonable. The distance may have been much longer. So, to take an article like brick, which must take a low rate. It may be shipped to a point of consumption at what would be considered a reasonably low rate. Well, the brick commences to be made at that point, and it would probably prevent the brick being shipped at all from this point that had shipped it. Yet, it does not argue that the rate was unjust or unreasonable because the parties could not ship. The same is true of coal. Coal might be shipped to a point and yet upon the finding of coal at the point of consumption the mines which had been shipping the coal might not be able to ship at the rates which they had formerly. Yet those former routes
201 would continue to be just and reasonable. Instances might be multiplied.

Q. 13. You stated that the rates from New York and other northeastern cities on traffic hauled by the route through Chattanooga to Nashville were as follows:

Class	1	2	3	4	5	6
	91	78	60	42	36	31 cents.

Are those rates, in your opinion, just and reasonable of themselves?

A. They might be higher and still be not unreasonably high. They might be as high as the rates to Chattanooga and no doubt would be if the lines through Chattanooga, working through Chattanooga could alone fix the rates. But they meet competition round the other way—competition via the Ohio river.

Q. 14. My question excluded competition. I asked if they were unjust in and of themselves?

A. I answer that they are above the additional cost of transportation; that is to say the actual movement expense of this particular traffic, although they might be higher and still be not unreasonably high. They are just as much the lines via Chattanooga can charge.

Q. 15. Do they pay what you term operating expenses?

A. They pay more than the actual movement expense incurred in the moving of this particular traffic. That is to say, the expense incurred as between moving this traffic and not moving this traffic.

Q. 16. The haul from New York and other northeastern cities through Chattanooga to Nashville is 151 miles longer than the haul to Chattanooga, is it not?

A. It is.

Q. 17. Is a rate reasonable, in and of itself, which does not yield the carrier a proper remuneration in excess of the cost of transportation?

A. In my opinion a road is always justified in taking additional traffic or traffic which it otherwise could not get, to the extent of making a rate as low as the actual movement, expense incurred in the movement of that traffic.

Q. 18. Can it be ascertained whether a rate is reasonably remunerative to the carrier without first considering the cost and the expense of the service of carriage?

A. It is very difficult to obtain the actual cost of carriage. Railroads arrive at that result just as nearly as they can, and then they endeavor in making rates to fix that average cost or that estimated cost of carriage as a minimum below which they will not go.

202 Now there may be average cost or estimated cost including fixed charges; there is the cost which leaves out the fixed charges and takes all other kinds of expense; then there is a cost which pertains simply to the movement of a particular business; a cost which is incurred only because that particular business is moved.

Q. 19. Is not the expense or the cost of the service of carriage an element to be considered in determining the reasonableness or the unreasonableness of a given rate or set of rates?

A. My experience is that the estimated cost is only used as a minimum below which the carriers will not go.

Q. 20. Does not the cost or expense of the service of transportation depend largely or to some extent on the length of the haul, other things being equal?

A. Other things being equal, the longer the haul, the greater the cost.

Q. 21. Other things being equal, is not the consumption of time greater, the greater the length of the haul?

A. Other things being equal, yes. A great deal, however, is covered by that term "other things being equal."

Q. 22. Is not the consumption of fuel greater, the greater the length of the haul, other things being equal?

A. Other things being equal, yes.

Q. 23. Is not the wear and tear on locomotives, cars, tracks, road, etc., greater, the greater the length of the haul, other things being equal?

A. Yes, sir.

Q. 24. Is not the cost of keeping the road in repair or in good condition greater, the greater the length of the haul, other things being equal?

A. Yes, sir.

Q. 25. Other things being equal, does it not require more locomotives and cars and more crews for running trains on a long road than on a short road?

A. Other things being equal, yes sir.

Q. 26. Other things being equal, does not distance add to the cost of building a road, and are not therefore the fixed charges such as interest on the capital invested, greater, the greater the length of the road?

A. Other things being equal, yes, sir.

Q. 27. Other things being equal, is not the service more valuable to the shipper, the greater the length of the haul? In other words, will not a haul of 100 miles give a shipper more extended markets for his goods or produce than a haul of 50 miles?

A. Not necessarily. The haul to the shipper or consignee
203 where he is at a point 100 miles distant from the point of shipment may not be worth as much as the haul to the consignee remote only 50 miles from the same point of shipment.

Q. 28. You stated that traffic was hauled from New York and Boston through Chattanooga to Nashville in car-loads and under through bills of lading. Is not this the case also as to traffic from those cities to Chattanooga?

A. It is.

Q. 29. Are not the rates by all the lines from New York and Boston to Nashville both through Chattanooga and by the other routes the same?

A. Generally the rates are the same.

Q. 30. Are not those rates maintained by agreement between those lines?

A. In past years there have been fierce contests over the rates to Nashville. They have been reduced far below what they are now. The result of those several contests and of the competition direct and competition indirect—by indirect competition I mean expression of view in meeting and in conference as to what rates should be—the fighting it out, as it were, by argument—have resulted in those

rates, and while they may be rates understood and agreed to by all the lines, they are nevertheless the result of fierce, active, controlling competition covering a period of many years. Business has been in the past shipped to Nashville from the East by the Cumberland river from Ohio River points.

Q. 31. It was in order to do away with this fierce competition of which you speak that the roads finally adopted these rates, was it not?

A. These were just about as high as the rates could be made and maintained in view of the competition, not only rail but particularly by the Ohio River and the Cumberland River boats.

Q. 32. Do you know how long since through transportation from New York and Boston to Cincinnati and thence via the Ohio and Cumberland rivers to Nashville has existed?

A. I cannot recall now. But it was a few years prior to 1891. My acquaintance about the competition via the Cumberland river into Nashville has not been so intimate since September 1st, 1891, as it was prior to that time.

Q. 33. Are not the rates by all the lines from New York and Boston to Chattanooga the same?

A. The rates by all the lines are the same; and the rates by the rail and water lines are the same except the Mallory line from New York to Brunswick and thence to Chattanooga.

204 Q. 34. Were not those rates now in force on the six classes to Chattanooga and which you have named, established by agreement between the carriers, members of the lines, parties to those rates?

A. They are; but they are likewise the result of competition. They are also due to competition. The competition has not been found in the past so active, so disturbing of rates, or rather so reductive of rates as to necessitate fixing the rates to Chattanooga at the point at which it was found necessary to fix them at Nashville by the lines through Chattanooga.

Q. 35. Is not Chattanooga one of the points in what was known as the territory subject to the jurisdiction of the Southern Railway & Steamship Association?

A. It is in the territory of what was known as the territory of the Southern Railway & Steamship Association, and Nashville was at one time in that territory also.

Q. 36. Did not that association fix the rates to all competitive points within that territory, such as Nashville, Chattanooga, Atlanta, Rome, etc.?

A. The Southern Railway & Steamship Association—through the machinery of the Southern Railway & Steamship Association the rates were published; but the rates were fixed by the lines themselves, members of the association. There was competition regulated somewhat by the machinery of the association, perhaps, but nevertheless competition. Sometimes direct, active and by this competition in conference and in convention that I have referred to. The rates to Chattanooga have not always been as high as they are now. Frequently competition has forced them lower than

they are now. But in the main competition has not been found so active and effective as to reduce them below the figures they are now.

Q. 37. Each carrier, a member of that association had a voice in fixing the rates, did it not?

A. Yes, sir; there was also in the event of a disagreement at one time and until less than three years ago, a plan of arbitration where the parties could not agree.

Q. 38. Each carrier, a member of that association, was bound to abide by the rates agreed upon, was it not, by the rules of the association?

A. Under the old agreements, yes. But they could withdraw from that agreement upon reasonable or agreed notice.

Q. 39. What organization has succeeded the Southern Railway & Steamship Association?

205 A. The immediate successor was the Southern States Freight Association. The second successor, and the one at present in existence, is the Southeastern Freight Association.

Q. 40. About when did the Southern States Freight Association come into existence?

A. On or about October 21st, 1895, the Southern States Freight Association came into existence. The Southeastern Freight Association on or about May 1st, 1897.

Q. 41. How long have you been engaged in the railroad business in the territory east of the Mississippi and south of the Ohio and Potomac rivers?

A. More than 26 years.

Q. 42. Has the greater charge for the shorter than the longer haul over the same line in the same direction, the shorter being included in the longer, ever to your personal knowledge, been made in that territory before or since the enactment of the act to regulate commerce in 1887, except in cases of competition in transportation to the longer-distance point?

A. Not that I recall. No line willingly and of its own volition arbitrarily reduces the rates to a further point to a less figure than an intermediate point. It is the result of competition where it does make the rate less for the longer than for the shorter distance in the same direction over the same line.

Redirect examination.

By Mr. BAXTER:

Q. 1. Can the number of tons carried one mile or the number of tons carried of freight-earning revenue or the average receipts per ton per mile or the average cost of carrying one ton per mile either jointly or separately be used as the standard for railroad rate-making?

A. It cannot and is not.

Q. 2. State whether competition between carriers, whether by

rail or by water substantially affects the circumstances and conditions under which the transportation of freight is conducted.

A. It does. Not only does it affect the rate itself, but it likewise affects the circumstances and conditions under which the property may be carried. Competition will require a road to run trains at a higher rate of speed; it will require it frequently to carry cars loaded to a less weight per car; it will require it sometimes to take a part of a car-load without waiting to fill up the car; it will require frequently the road to pay a claim, the payment of which the railroad company might successfully resist, in order to get business; and therefore it does very materially affect the circumstances and
206 conditions under which the property is transported, in addition to the rate of freight which it affects.

Q. 3. Something has been said in the cross-examination in regard to the value of the service. May there not be a difference between the value of the service to the shipper and the value of the service to the carrier?

A. Precisely. The value of the service to the shipper or consignee for the transportation of 100 lbs. of stuff may be only 25 cents per hundred pounds. The value of that service may be to the carrier greater for at least two reasons: one that it will cost it more to perform the service than the 25 cents; another reason, that it may be employing all of its motive power and rolling stock in the transportation of property which yields it for an equivalent service much more net money than 25 cents would for the first service referred to.

Q. 4. If the shipper living at Memphis where cotton is worth in the market, say 10 cents, ships that cotton to Holly Springs, where it is worth in the market only 9 cents a pound, would not the value of the service to him be less than nothing?

A. It would; one cent per pound less than nothing.

Q. 5. If, on the other hand, he shipped it from Holly Springs, where it was worth 9 cents per pound, to Memphis, where it was worth 10 cents per pound, the value of the service to him would be one cent, would it not?

A. Yes, sir; one cent per pound; and in either case the value of the service to the railroad company might be the same.

Recross-examination.

By Mr. SHAVER:

Q. 1. Are not the rates now in force to Nashville and Chattanooga the same as the rates in force when the Southern Railway & Steamship Association was in existence? Has there been any material change in the rate or any change in the rates since that association ceased to exist?

A. No material changes.

Q. 2. You stated in substance in your direct examination that the average receipts per ton per mile and estimated cost of carrying one ton one mile on traffic in general did not furnish a standard by

which you could determine what was reasonable rate in a given case, I believe?

A. Yes, sir.

Q. 3. Is not such data useful to some extent in determining whether an existing rate is or is not excessive?

207 A. It is useful in determining whether all the rates are excessive. In other words, the average receipts of a road per ton mile might be so much that taken in connection with other things it might be held that the rates were excessive. But much the largest proportion of the tonnage of all roads is carried at rates which are fixed by competition in some form or other, either of carriers or of markets or of one product with another product which will serve the same purpose.

Q. 4. You stated in your direct examination what were the average receipts per ton per mile of your road and the estimated cost of carrying a ton a mile on traffic from New York and other northeastern cities, and you stated that the proportion which your road received of the through rates from those points to Nashville exceeded per ton per mile the estimated cost per ton per mile and the average receipts per ton per mile and from that you inferred, did you not, that the proportion of the through rates to Nashville which your road received, paid something in excess of the cost of transportation?

A. I stated the average cost per ton per mile for transporting freight over the whole system of the East Tennessee, Virginia & Georgia railroad during a portion of 1892. I did not state the cost with respect to the business from New York to Nashville alone. I stated in my direct examination that the traffic carried from New York to Nashville paid the East Tennessee, Virginia & Georgia railroad more than the expense incurred in carrying that additional traffic or stated that in substance.

Q. 5. From that you inferred, did you not, that your road's proportion of the through rate paid something in excess of the cost of transportation?

A. I did not say that. I said that the business, the traffic did pay, that is, the East Tennessee, Virginia and Georgia's proportion paid it more than the expense incurred in carrying that particular traffic. This business was carried on trains which would have to run any way, and there are other expenses which would have been incurred whether this business was carried or not, and therefore I say, unhesitatingly, that this business paid more than the cost incurred by reason of this particular movement.

Q. 6. How long have carriers been making out this data as to average receipts per ton per mile and estimated cost of carrying one ton one mile?

A. A great many of them do not do it at all. The Southern railway today does not attempt to figure the cost per ton per

208 mile of carrying freight. The records of the East Tennessee, Virginia & Georgia railroad shows that the estimated average cost for transporting all kinds of freight on all portions of the East Tennessee, Virginia and Georgia railroad from April 1st, 1891, to

June 24th, 1892, inclusive, was seventy-one one-hundredths (.71) of a cent per ton per mile.

Q. 7. Has not this data been kept by other roads for a great many years?

A. I have no information that any road has invariably kept the cost per ton per mile for a great many years. Some roads have done it for some years, I know.

Q. 8. They have done it for their own use, have they not?

A. I assume so. It is published in their annual reports. I will say that my opinion is that it is very difficult if not impracticable to arrive at the actual cost per ton per mile of moving freight traffic over any road.

Q. 9. This data is based upon actual calculation, is it not?

A. The average receipts per ton per mile are very easily arrived at. The average cost per ton per mile, as I have testified, is estimated as to the East Tennessee, Virginia & Georgia railroad.

Q. 10. The average receipts per ton per mile are the result of accurate calculation, is it not?

A. Yes, sir.

Redirect examination.

By Mr. BAXTER:

Q. 1. Please file as Exhibit No. 3, to your deposition a copy of the agreement under which the Southeastern Freight Association now in existence was organized.

A. Yes, sir.

Mr. BAXTER: That is all.

Q. 2. Do you know or can you set forth any other matter or things which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. No, sir.

NASHVILLE, TENN., *July 14th*, 1897.

T. M. GALLAGHER, a witness on behalf of the defendant, having been duly sworn, testified as follows:

Direct examination.

By Mr. BAXTER:

Q. 1. State your name, age, residence and occupation.

209 A. T. M. Gallagher; forty years of age; reside in Nashville; I am general freight and passenger agent of the Nashville, Paducah & Cairo, and the Nashville & Evansville Packet Companies.

Q. 2. Upon what rivers do the boats of those two companies ply?

A. The Cumberland and Ohio.

Q. 3. How many boats are owned or operated by each of the companies?

A. Five boats by the two companies.

Q. 4. State the names of the boats and the actual carrying capacity of each.

A. The H. W. Buttorff, about three hundred and ninety tons, as near as I can get at it. She has a Government measurement, but in the carrying capacity we have always to estimate that by the amount of freight and the Government measurement does not give us the carrying capacity. We estimate it by the number of bags of corn they can load to. That is the way we get at the boat's carrying capacity.

The steamer W. K. Phillips, about three hundred and fifty tons; the steamer R. Dunbar, about three hundred and ninety tons; the steamer P. D. Staggs, about two hundred and fifty tons, and the steamer Bob Dudley, about three hundred and twenty-five tons.

Q. 5. Between what cities do each of said steamers ply?

A. Between Nashville and Paducah, Nashville and Evansville, and Nashville and Burnsides, Ky., in connection with the Cincinnati Southern road up there.

Q. 6. Which of these steamers ply between Nashville and Paducah?

A. The H. W. Buttorff, making two trips per week.

Q. 7. Which of these steamers ply between Nashville and Evansville?

A. The steamer W. K. Phillips—one trip a week to Evansville.

Q. 8. Which of these steamers plies between Nashville and Burnsides?

A. The steamer R. Dunbar.

Q. 9. You may state in that connection, how many trips she makes a week.

A. One trip a week to Burnsides.

Q. 10. During how many months in the year, on an average, is the Cumberland river navigable for the steamboats which ply between Nashville and Paducah, and between Nashville and Evansville?

A. Well, sir, the seasons differ. Sometimes we make full
210 eight months to eight and a half months between Nashville and Paducah; and from seven and a half to Evansville. Some seasons we run as long as nine and ten months. The weather seems to come around in cycles, and sometimes we hardly lay up the whole season.

Q. 11. On traffic shipped from New York and other eastern cities via the trunk lines to Evansville and thence to Nashville, what rates will your company accept for the transportation of such freight between Evansville and thence to Nashville, what rates will your company accept for the transportation of such freight between Evansville and Nashville?

A. Well, from six to twelve and a half cents per hundred. In bringing freight by river we never use classifications on the western waters, on the Ohio, Cumberland and the Mississippi. We take

freight by its weight and bulk. The heavy freight has considerable precedence over light freight, in giving a rate, from the fact that the tonnage on the light steamboats is limited. We cannot couple up like a railroad company, and run all the cars we want; but, for instance, we can take nails at about half what we can boots and shoes. Now, dry goods we can take at a very low rate, from the fact that they are in a good compact case, and weigh well. We make a low rate on them. Ten cents a hundred would be a magnificent rate on dry goods from Evansville to Nashville. We would bring nails at six and a half or seven cents from Evansville, and boots and shoes at twelve and a half.

Q. 12. Do I understand, then, that you would carry the various classes of freight known to the official classification, according to weight and bulk at the prices suggested above?

A. Yes, sir.

Q. 13. In this case it appears that the rates from New York to Chattanooga in 1892, were as follows:

Classes	1	2	3	4	5	6
Cents	114	98	86	73	60	49

It also appears that the rate- from New York via the trunk lines to Evansville, are as follows:

Classes	1	2	3	4	5	6
Cents	83	72	55	39	33	28

It thus appears that the difference- between the rates from New York to Chattanooga, and the rates from New York to Evansville, are as follows:

Classes	1	2	3	4	5	6
Cents	31	26	31	34	27	21

211 The above figures refer to cents per hundred pounds. State whether or not your company would be willing to carry freight from Evansville to Nashville at the above differences on classes 1, 2, 3, 4, 5 and 6?

A. Yes, sir. We would be glad to get such rates on shipments from Evansville.

Q. 14. What is the highest rate you have charged on any class of freight from Evansville to Nashville?

A. Ten cents a hundred.

Q. 15. And the lowest?

A. Six.

Q. 16. And you have accepted and carried freight at those figures?

A. Yes, sir.

Q. 17. And would be willing to do it now?

A. Would be willing to do it again and expect to do it again next season when we open up our fall trade.

Q. 18. The rates from New York to Cincinnati, are as follows:

Classes	1.	2.	3.	4.	5.	6.
Cents	65.	57.	44.	30.	26.	22.

The difference between those rates and the rates from New York to Chattanooga, are as follows:

Classes	1.	2.	3.	4.	5.	6.
Cents	49.	41.	42.	43.	34.	27.

State whether or not your company in connection with other steamboat companies operating on the Ohio river would be willing to carry freight from Cincinnati to Nashville, at the rates represented by the difference which is enumerated?

A. Yes, sir.

Q. 19. Are there any boats plying upon the Ohio river, with which your boats connect at Evansville?

A. Yes, sir; we have connected with the Memphis, New Orleans & Cincinnati Packet Co., which operates between Cincinnati and New Orleans.

Q. 20. Have you ever participated in the carriage of freight from Cincinnati to Nashville?

A. A great deal.

Q. 21. What is the highest rate you charged on any freight?

A. Thirty cents a hundred.

Q. 22. From Cincinnati to Nashville?

A. From Cincinnati to Nashville. We handle a class of
212 goods—collar pads, which are light and bulky and take a world of room, and we get thirty cents a hundred on those. Nails, we bring at twelve cents—nails and wire—twelve cents a keg, and twelve cents a hundred on the wire—barbed wire. The rates run from twelve to thirty cents a hundred. On paper pads in cases, we get twenty cents a hundred; wall paper twenty cents a hundred.

Q. 23. Dry goods, boots and shoes and groceries, at what rates are you willing to carry those from Cincinnati to Nashville?

A. Dry goods would take a lower rate than boots and shoes. Boots and shoes would be forty cents a hundred from Cincinnati. The agent at Cincinnati makes the rates this way. We prorate with him. If it is necessary to make a rate of ten cents, we take our proportion, which would be five cents. He makes whatever rates are necessary to get the shipment from the railroad at Cincinnati. Dry goods, we get, I suspect, at about twenty-five cents a hundred, that being heavy and compact, and good freight.

Q. 24. Do the steamers plying on the Ohio and Cumberland rivers publish tariffs quoting rates upon the different classes of freight like the railroads do?

A. No, sir.

Q. 25. Do they undertake to maintain such tariffs as they publish?

A. No, sir, they do not.

Q. 26. The rates from New York and Boston, via ocean to New Orleans, and thence via river to Memphis, are as follows:

Classes	1	2	3	4	5	6
Cents	65	60	45	33	28	27

The difference between these rates and the rates from New York to Chattanooga are as follows:

Classes	1	2	3	4	5	6
Cents	49	38	41	40	32	22

Please state whether your boats and the boats of other companies with which you connect would be willing to carry from Memphis to Nashville, freight at the rates shown by said differences?

A. Yes, sir, we have the same line connecting with us from there that we have to Cincinnati. They would bring it as well from Memphis as they would from Cincinnati. In fact they would be more willing to do that, from the fact that the trips are lighter upstream than they are downstream.

Q. 27. Has your line ever carried any freight from Memphis to Nashville?

213 A. No, sir; unless it was sugar or molasses coming from New Orleans via Memphis.

Q. 28. At what rate do you carry sugar and molasses from New Orleans to Nashville?

A. Eighteen cents a hundred on sugar, and one dollar a barrel on molasses.

Q. 29. Under what class would sugar fall under the official classification, do you know?

A. No, sir; I do not know; I never looked it up in the official classification. We figure the rate at twelve cents a hundred from Paducah to Nashville. That is where the stuff is reshipped on our boats.

Q. 30. Whether shipments come from Cincinnati destined to Nashville or from Memphis or New Orleans, destined to Nashville, they would be transferred to your company's boats either at Evansville or Paducah?

A. At Evansville or at Paducah. From Cincinnati going south is the boat that leaves Cincinnati Wednesday connecting with our Evansville boat, almost direct at Evansville, Saturday. Our boat leaves Nashville Wednesday, and one of theirs leaving Cincinnati Wednesday. They both meet — Evansville, and the connection is almost direct. There is another boat which leaves Cincinnati Saturday, which connects with our Paducah boat at Paducah the following Wednesday and makes good connection. The goods are about six days from Cincinnati to Nashville.

Q. 31. How long are they out from Evansville to Nashville?

A. Just about the same. It takes the Evansville boat a week to make a trip; she leaves here at noon, and gets back Tuesday morning.

Q. 32. How long does it take to bring goods from Evansville to Nashville?

A. The boat leaves there Saturday at four o'clock in the evening and gets here Tuesday morning early; that is about two and a half days or two and three-quarters.

Q. 33. What is the time by the boats from Paducah to Nashville?

A. About the same time; they leave there Wednesday noon and get here Friday morning early.

Q. 34. If rates that would be satisfactory to you, such as you have referred to above, were permanent, and freight was offered in sufficient quantities, could an adequate line of tonnage be obtained to move such freight at those rates?

A. I think so, without any doubt.

214 Cross-examination.

By Mr. SHAVER:

Q. 1. I understood you to say that you are connected officially with two lines of steamers on the Cumberland river? What are the names of those lines?

A. Yes, sir; we have two lines; the Nashville, Paducah & Cairo Packet Co., and the Nashville & Evansville Packet Co.

Q. 2. How many boats are there on each of those lines?

A. We have five lines together.

Q. 3. Both lines?

A. Yes, sir. Their earnings are put in together. Their ownership is about the same. They are not incorporated. We always designate them differently.

Q. 4. Did you say five to each lines, or five to both?

A. Five to both lines.

Q. 5. One steamer plies, I understood you to say, between Nashville and Paducah?

A. Yes, sir.

Q. 6. And makes two trips a week?

A. Two trips a week.

Q. 7. Two round trips?

A. Two round trips.

Q. 8. And one plies between Evansville and Nashville?

A. Yes, sir.

Q. 9. And makes one trip a week?

A. Yes, sir.

Q. 10. One round trip?

A. Yes, sir.

Q. 11. Those are the only two boats that ply between Nashville and Paducah, and Nashville and Evansville?

A. Yes, sir.

Q. 12. How many tons capacity did you say the boat had that plies between Nashville and Paducah?

A. Three hundred and ninety.

Q. 13. How many tons capacity does the boat have that plies between Nashville and Evansville?

A. About three-hundred and fifty.

Q. 14. You stated that the Cumberland river was sometimes navigable nine and ten months in the year?

A. Yes, sir.

Q. 15. About how often does that happen?

A. Well, it comes about every seven years, we figure it.

Q. 16. During the other years how long is it navigable?

A. We have eight months' navigation, and eight and a half months to Paducah. Business drops out in the Evansville trade, along about this time of the year. However, our boat is running now to Evansville. It left today at noon. It is running a little longer than usual.

Q. 17. During the other years, how many months is the river navigable from Nashville to Paducah?

A. It runs about eight months.

Q. 18. Then, as a general rule, it is not navigable from three and a half to four months a year?

A. No, sir, we commence, frequently, in the middle of November, or the first of December, and run up to the first of July, and possibly to the 15th of July. We always figure on eight months' navigation in the lower Cumberland.

Q. 19. If goods are transported from New York and other eastern cities to Cincinnati, and thence by the Ohio and Cumberland rivers to Nashville, would they not have to be transferred from the cars at Cincinnati to the boats on the Ohio?

A. Yes, sir; at a cost of three cents a hundred.

Q. 20. Would they not have to be again transferred from the Ohio River steamer at Evansville or Paducah to the Cumberland River steamer?

A. Yes, sir; at the cost of the last steamer, out of their proportion of the rate. We pay that on all shipments they bring to us, the tonnage. What we mean by tonnage, is that there are wharf-boats at Paducah and Evansville. In case the boats do not make a direct connection, these wharf-boats receive these shipments and take care of them until the boat to which they are to be reshipped on comes. The tonnage is charged to the boat that gets the shipment, for taking care of the goods.

Q. 21. You have stated that the rates which your steamer lines were willing to accept from Evansville to Paducah were very much lower than the rates charged by the railroads.

A. Yes, sir.

Q. 22. Are the rates which you charge from Paducah and Evansville, very much lower than the rail rates from those points to Nashville?

A. I think they are.

Q. 23. I think you said your highest rate was ten cents a hundred pounds, and your lowest, six.

A. Yes, sir. The highest we have received on any reshipping freight, coming from Evansville, brought to us by the railroads there, in connection with our boats, was ten cents a hundred, and we brought it as low as six cents a hundred.

Q. 24. How long has that been the case?

216 A. That has been the case for several years. Last year we had to handle glassware at six cents a hundred, in order to secure the shipment, and that is a very cumbersome, light freight. It paid us very poorly. However, we had to accept that rate in order to get the shipment.

Q. 25. Are there any through rates published from New York and other eastern cities via Cincinnati, and thence via the Ohio and Cumberland rivers, to Nashville?

A. Not that I know of.

Q. 26. Have you ever known of such through rates being published?

A. No, sir.

Q. 27. Have there been through shipments to any extent since the roads from Cincinnati and Evansville were completed to New York, and other eastern cities, via Cincinnati, and thence via the Ohio and Cumberland rivers to Nashville?

A. We have handled some through shipments. I cannot recall how long ago that was. But there is one shipment I remember in the last six weeks where we handled about fifteen hundred boxes of axes, manufactured in New York, on which our Pittsburg connection made a rate of twenty-one cents a hundred from Pittsburg to Nashville. I think they got that freight from the Pennsylvania Company at Pittsburg—it was some big axe concern in New York—and we brought two shipments of them, something over fifteen hundred boxes of axes in the last six weeks from New York State.

Q. 28. Notwithstanding the very much higher rate by rail from Evansville and Cincinnati to Nashville, than by water, the railroads do almost the entire through business, do they not?

A. Yes, sir.

Q. 29. And for how many years has that been the case, or about how many years?

A. I think about fifteen or sixteen years.

Q. 30. Notwithstanding the comparatively low rates which you charged them, the railroads still do the business?

A. Yes, sir; the shippers seem to give them the preference.

Q. 31. Can you state the distance by the Ohio and Cumberland rivers from Cincinnati to Nashville?

A. Yes, sir, it is quite six hundred and ninety miles from Cincinnati to Nashville, by river.

Q. 32. Can you state the distance by the two rail lines from Cincinnati to Nashville?

A. No, sir, I cannot.

217 Q. 33. Can you state the difference by river from Evansville to Nashville?

A. Three hundred and forty miles.

Q. 34. Can you state the distance by rail from Evansville, the direct, short line?

A. I think it is one hundred and fifty-seven miles.

Q. 35. If the rates by the direct rail lines are reasonably low, can the steamers on the rivers, all the river lines, successfully compete with such rail lines?

A. Well, it is according to how low they get it. We are handling freight very low now. It is very difficult for us to make money. We have to economize in every department very closely on account of the competition of the railroads.

Q. 36. Notwithstanding your very low rate, you do not get the traffic?

A. We get some. We handle a world of fruit jars from the interior of Indiana.

Q. 37. I am talking about through shipments from New York and eastern cities.

A. Very few of them.

Q. 38. Which is the better mode of transportation, water or rail?

A. Well, I have to advocate the river.

Q. 39. Is it your sincere opinion that the river transportation is preferable?

A. Not from New York. My honest opinion is, it would be better all-rail.

Q. 40. Do not railway trains, as a general thing, make better time than boats or vessels?

A. Yes, sir.

Q. 41. Is not time an element of great importance in commercial transactions?

A. Yes, sir, it is so considered.

Q. 42. Are not rivers, as a general rule, much more circuitous and less direct than rail lines?

A. Yes, sir.

Q. 43. Do not rail lines over which many trains are run daily, transport a very much greater tonnage of freight than water lines, as a general rule?

A. As a general rule, yes, I think so.

Q. 44. What is the average number of cars in a freight train, if you know?

A. I do not know.

Q. 45. What is the average number of tons per car, if you know?

A. I do not know.

Q. 46. Is not transportation by river steamers more hazardous than transportation by rail?

218 A. I do not think so, in this day and time.

Q. 47. Are not goods when transported by river steamers, insured?

A. As a general thing, yes, sir.

Q. 48. Do you know whether or not that is the case as to goods transported by rail?

A. No, sir, I do not.

Q. 49. Is it not a fact that the railway lines have a monopoly on their own road-bed and rail, while rivers and navigable bodies of water are public highways, free and open to all ships and steamers?

A. Well, I do not know much about the railroads' rights. I know that the waterways are public highways and free to every one.

Q. 50. Have not rail lines the advantage over water lines in respect to the handling of traffic?

A. Yes, sir.

Q. 51. Is not through traffic from New York and other eastern cities hauled through to Nashville in car loads and in the same cars in which they are loaded at New York and such northeastern cities?

A. I understand that is the case.

Q. 52. There is no charge for transfers—lighterage, or wharfage—on the transportation of goods from New York and other northeastern cities by rail to Nashville, is there?

A. I do not know.

Q. 53. Since railways have come into existence, has not the business of the river lines on through hauls, almost entirely ceased?

A. Except to some places. From St. Louis to New Orleans, they have competition there with the railroads. I do not think the railroads will ever be able to overcome that. That is a barge line out of St. Louis—handling grain out of St. Louis.

Q. 54. Is not most of the business done by your boats on the Cumberland river, local business between the different landings on the river?

A. No, sir. I never have made a comparison, but I think it about equals the through business; that is, what we call through business from Pittsburg and Cincinnati, about on the whole, equals our local business.

Q. 55. That business, however, is not business from New York and other eastern cities destined to Nashville, is it?

A. Some shipments are made that way. I never noticed them closely. They just pass through and are delivered.

219 Q. 56. It is very rare that that is the case, is it not?

A. No, sir; we have some shipments every season. We handle a good deal of iron and heavy hardware from Pennsylvania, and from up in the neighborhood of Pittsburg—a little out in the interior.

Q. 57. Destined for Nashville?

A. Yes, sir.

Q. 58. Have you any competition on the Cumberland river with other lines?

A. Not at present, we usually have, though.

Q. 59. Are your steamers very light-draft steamers?

A. Very light. I suspect the lightest draft on the western waters. They are considered by the steamboat men on the western rivers, as having the lightest draft boats built. In fact the Cumberland River steamboat men are noted for being able to build the lightest draft boats.

Q. 60. The boats have to be of light draft in order to navigate the river?

A. Yes, sir; on account of the frequent low water. We have a boat now that is just been completed, that will carry three hundred and twenty-five tons. When she is light she draws about fourteen inches. When loaded, she carries about three hundred and twenty-five tons and draws about four feet.

Q. 61. What is the mouth of the Cumberland river?
A. Smithland is at the mouth.
Q. 62. What is the distance by the Ohio river from Cincinnati to he Smithlands?
A. It is called four hundred and ninety miles from Cincinnati to he Smithlands.
Q. 63. What is the distance from Paducah to Smithland?
A. Twelve miles.
Q. 64. What is the distance from Evansville to Smithland?
A. One hundred and thirty-eight miles.

Redirect examination.

By Mr. BAXTER:

Q. 1. Please look at an official classification No. 16, adopted by ie Joint Traffic Association, to take effect January 1st, 1897, here nown you, and state how sugar, not otherwise specified, in bags, alf barrels, or barrels, is classified in less than car-loads and in car-loads.

20 A. Sugar, not otherwise specified, in bags, barrels, or half barrels, subject to Rule 5 B, less than car-loads, 4th class; r-load lots, 6th class.

Q. 2. Look at the same classification, and state how molasses in gs, barrels or hogsheads, is classified.
A. Molasses in kegs, barrels or hogsheads, less than car-loads, h class; car-loads, 5th class.
Q. 3. Is not steamboat transportation on the Ohio and Cumber-nd rivers the cheapest mode ever known in that section of the untry?
A. Decidedly so.
Q. 4. What is the difference in time in the transportation of ight from Evansville to Nashville by river as compared with its nsportation by rail?
A. I cannot tell what the rail makes, but our shippers here—we ing a good deal of stuff out of Evansville—they tell me that we equently beat the railroads.

Counsel for the commission objects to this answer as hearsay.

Q. 5. How much time is required by the river for the transporta-n of freight from Evansville to Nashville?
A. About two days and three-quarters.
Q. 6. What is the distance from Evansville to Nashville by rail?
A. I think it is quite 157 miles.
Q. 7. What is the average speed of freight trains in this section the country?
A. I really do not know.
Q. 8. Where freight is shipped from New York via Evansville to shville and has to be transferred from cars at Evansvills to a at for Nashville, how is the transfer made—by drays or are the rs brought down alongside the wharf-boats?
A. By drays and wagons.

Q. 9. Is there not a line of railway leading down to the wharf-boat at Evansville?

A. No, sir; the Louisville & Nashville railroad has a side track, and incline track down below the city wharf at Evansville. We have landed there frequently and put out hoop poles and lumber and such freight as that on the cars on that incline track. Anything could be dropped down there and loaded in the boat.

Q. 10. What is the cost per hundred pounds for transfer by dray from the cars at Evansville to a steamboat there?

A. From two to three cents a hundred.

Q. 11. What does the wharf-boat charge for storing freight from the time it is delivered to it until it is put on board the steamboat.

221 A. We pay the wharf-boat for that so much a trip. We pay them ten dollars for receiving our trip. Whatever it may be, a light load or a heavy load, it is so much for each trip. There is no wharf-boat charge on shipments of that character.

Q. 12. Well, then, the only difference in time between the transportation of freight from Evansville to Nashville and the time required by rail, would be the two and three-quarters days by river as against whatever time may be required by rail?

A. Yes, sir.

Q. 13. And the cost of transfer or drayage at Evansville from the cars to the boat does not exceed two or three cents a hundred pounds?

A. That is the arrangement we had there for transferring freight.

Q. 14. Now, what does the insurance of freight carried upon steamboats cost?

A. On the Cumberland river, we have very little insurance. Rarely anybody insures on the Cumberland. I have always understood it was figured at three cents a hundred pounds. It would cut that figure in the rates, about three cents a hundred pounds.

Q. 15. What length of time is required to make a transfer of freight from the cars to a steamboat at Evansville?

A. I do not think it takes any very great while. They have ample transfer facilities there.

Q. 16. What is the distance from the railroad depot to the steamboat landing or wharf-boat?

A. It is ten or twelve blocks to the roads we connect with, the P., D. & E. and the Evansville & Terre Haute.

Q. 17. Then, if I understand you, the insurance of three cents a hundred pounds and the transfer of three cents a hundred pounds at Evansville, making six cents a hundred pounds in all, is the only additional cost between shipping freight by rail to Evansville and thence via boat to Nashville as against shipping via all rail from New York to Nashville?

A. I think so. That is, all shipments we get from beyond Evansville come that way without any extra charge on them. The railroad makes the rate to the river. They include the transfer in this rate. In discussing the question of through shipments here, I ask them to quote rate to the river at Evansville, the railroads being

right there and being in touch with the transfer men are able to secure better transfer rates than we could here. They just get a rate to the river, delivered to the wharf-boat.

Q. 18. Then the rate from New York to Evansville would
222 include the delivery to the steamboat or the wharf-boat?

A. I do not know how those rates would be. I do know this, that on glassware coming from the interior of Indiana, they will give us the same rate to the river that they figure for the Louisville & Nashville railroad in the depot.

Q. 19. After the freight arrives at Nashville, what is the difference in the drayage cost from the steamboat landing to the merchants' stores and from the railroad depot to the same merchants' stores?

A. I do not know whether there is any difference at all. As a general thing, the wharf is closer to more of the business portion of the city than the depot is.

Recross-examination.

By Mr. SHAVER:

Q. 1. What kind of traffic constitutes the bulk of the traffic transported by your line from Evansville to Nashville?

A. We get at Evansville buckets, brooms, sieves, tubs, furniture, molasses, pickles and glucose. It is just a miscellaneous cargo.

Q. 2. Are the two lines of steamers you mention here under one ownership?

A. Yes, sir.

Q. 3. Then it is really one line to Evansville and one to Paducah?

A. It is all one in reality.

Q. 4. You just give it that name?

A. We just give it that name. It is not incorporated.

Q. 5. Are all five boats under one ownership?

A. Under one management, known as the Ryman line.

Q. 6. You have no competitive line on the river?

A. Not just now; we usually have. The river is free and we never pass a season without some competition. We have a good hold on the people from the fact that our river being susceptible to low water, when it gets down and there is no money in making trips, we run our boats just as long as it is possible to do it. The result is, the public stays with us, that is, the best shippers, and we overcome competition in that way. We do not advance the rates when the low water comes; we keep the same rate in effect in low water as in high water.

Q. 7. A number of years ago there were a number of lines on the river?

A. A number of them. We had a line from Pittsburg to
223 Nashville; a big line from Cincinnati to Nashville, consisting of five large boats, some of them side-wheelers; and we had a line from St. Louis to Nashville, and a line from Memphis to Nashville, and one from New Orleans to Nashville.

Q. 8. What has caused all these lines to go out of business?

A. Railroad competition.

Q. 9. Can you state how long ago it is that these various lines ceased business on the river?

A. No, sir; I could not recall that to memory just now.

Q. 10. About how many years?

A. About twenty-one or twenty-two years.

Redirect examination.

By Mr. BAXTER:

Q. 1. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer?

A. No, sir.

NASHVILLE, TENN., *July 15th*, 1897.

JOSEPH M. BROWN, a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination.

By Mr. BAXTER:

Q. 1. State your name, age, residence and occupation.

A. Joseph M. Brown; forty-second birthday; my residence is Marietta, Georgia; that is my personal residence; my official residence is Atlanta; occupation, traffic manager of the Western & Atlantic railroad.

Q. 2. How long have you been connected with railroad freight transportation business in the United States, and in what capacities?

A. Since the 1st day of January, 1877. I went into the service as freight clerk and filled a number of subordinate positions, as freight conductor, lost-car agent and inspection agent here at Nashville, claim agent, car accountant, general freight agent, general freight and passenger agent, and traffic manager.

Q. 3. Did the proportions which the Western & Atlantic
224 railroad receive on the various classes of freight shipped from New York and Boston via Atlanta and Chattanooga to Nashville in 1892, exceed the additional cost to said railroad of the movement of said freight?

A. The proportions which the Western & Atlantic received on the various classes of freight shipped from New York and Boston via Atlanta to Nashville in 1892, exceeded the additional cost to the Western & Atlantic railroad for the movement of said freight.

Q. 4. The rates from New York and Boston to Chattanooga in 1892 were as follows:

Classes	1	2	3	4	5	6
Cents	114	98	86	73	60	49

State whether in your opinion said rates were just or unjust, reasonable or unreasonable, and give your reasons for any opinion you may express.

A. The rates from New York and Boston to Chattanooga in 1892, in my opinion, were just and reasonable. This conclusion is reached from the fact that the rates were fixed by the tariff officials of the lines interested who carefully adjusted all conflicting interests and so arranged the rates as to give all the trade centers competing for the trade in certain territories just and equitable figures. The rates to Chattanooga, Birmingham, Rome, Dalton, Atlanta, Anniston and Athens are practically the same. A glance at the map will show these points, especially Chattanooga, Birmingham, Anniston, Rome and Atlanta, are grouped in so far as the rates and competitive territory is concerned, each town has about the same amount of what we may term "non-competitive territory."

In the case of Chattanooga, it has near-by mining towns on the Cincinnati Southern railway and the Nashville, Chattanooga & St. Louis railway; also some stations on the Memphis & Charleston, the Chattanooga Southern and the Alabama Great Southern.

Q. 5. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer?

A. I know of no other particular reasons. The general understanding is that to these points in the same general territory we endeavor to so adjust the through rates as to enable all the points in question to compete fairly for the trade and to control the
225 territory that is properly, geographically speaking, and I mean by that, in geographical proximity to their own.

Cross-examination.

By Mr. SHAVER:

Q. 1. Is not the Nashville, Chattanooga & St. Louis road owned or controlled by the Louisville & Nashville road?

A. Well, sir, I do not know about that; I could not tell you.

Q. 2. What roads actually reach Nashville?

A. The Louisville and Nashville and the Nashville, Chattanooga & St. Louis Railway systems, I believe.

Q. 3. Two roads?

A. Yes, sir.

Q. 4. What roads actually reach Chattanooga?

A. The Cincinnati, New Orleans & Texas Pacific; Nashville, Chattanooga & St. Louis, and I presume you may say the Memphis & Charleston, as that has a running arrangement with the Nashville, Chattanooga & St. Louis, whereby solid trains go through from Memphis to Chattanooga; the Alabama Great Southern; the Chattanooga Southern; the Chattanooga, Rome & Columbus; the Western & Atlantic; and two divisions of the Southern railway,

one leading southward by Rome and the other eastward by Knoxville.

Q. 5. Chattanooga is also situated on the Tennessee river, is it not?

A. Yes, sir.

Q. 6. The rates from New York and Boston to Chattanooga are as follows on the six numbered classes:

Classes	1	2	3	4	5	6
Cents	114	98	86	73	60	49

You have stated that those rates were, in your opinion, reasonable.

The rates from New York and Boston on a haul through Chattanooga and 151 miles further on to Nashville, are as follows:

Classes	1	2	3	4	5	6
Cents	91	78	60	42	36	31

Are those rates to Nashville also reasonable in and of themselves in your opinion?

A. Yes, sir.

Q. 7. You stated in your direct examination that the pro-
226 portion of the through rates from New York and Boston to Nashville received by your road paid something in excess of the additional cost?

A. Yes, sir.

Q. 8. How do you ascertain or know that those rates pay something in addition to the additional cost of movement?

A. The business that we handle from New York and Boston to Nashville goes in our north-bound cars. I presume about 70 per cent. of our movement is south bound and if we can put freight in those empty cars going north bound, we can afford to haul it at materially less expense than we could coming south because the cars are already down here and have to go back whether loaded or empty; and in the other case we scarcely ever bring an empty car south bound. In order to be explicit, I know of no empty cars we bring south at all, except occasionally flat cars for lumber and fruit cars for peaches and watermelons and things of that kind.

Q. 9. Is a rate reasonable in and of itself which does not yield the carrier a proper remuneration over and above the cost of service of carriage?

A. I should say not. If carried for less than cost, it would be unreasonably low.

Q. 10. Can it be ascertained whether a rate is reasonably remunerative to the carrier without first ascertaining the cost or expense of the service of carriage?

A. Well, it is very hard to determine regarding each particular shipment. Probably it is impossible to determine regarding each particular shipment, whether it, considered by itself, is remunerative or not. There are so many conditions attending the running of trains and so many cars that an engine can carry, and things of

that kind, that I do not see how we can lay down a general rule that would cover the case.

Q. 11. Is not the expense of the service of carriage an element to be considered in determining whether a rate or set of rates is reasonable?

A. In general, yes.

Q. 12. Does not the cost or expense of the service of transportation depend largely or to some extent on the length of the haul, other things being equal?

A. Well, I should say that is a factor.

Q. 13. Other things being equal, is not the consumption of time greater, the greater the length of the haul?

A. Necessarily so, other things being equal.

Q. 14. Other things being equal, is not the consumption of fuel greater, the greater the length of the haul?

A. As a general proposition, yes.

227 Q. 15. Other things being equal, is not the wear and tear on locomotives, cars, tracks, road-bed, etc., greater, the greater the length of the haul?

A. Yes, sir; the more miles to be traversed, the more the wear and tear on the tracks and things of that kind, as a general proposition.

Q. 16. Other things being equal, is not the cost of keeping the road in repair or in good condition greater, the greater the length of the road?

A. All other things being equal, I should say so.

Q. 17. Other things being equal, does it not require more locomotives and cars and crews for the running of trains on a long road than on a short one?

A. That would vary with the length of the road quite materially.

Q. 18. Other things being equal does not distance add to the cost of building a road and are not therefore the fixed charges, such as interest on the capital invested, greater, the greater the length of the road?

A. The character of the country being the same, whether a plain country or mountains, I should say so.

Q. 19. Would higher rates be charged to Nashville than are now charged but for competition?

A. Yes, sir, we would charge higher rates than we do but for competition.

Q. 20. How long have you been engaged in the railroad business east of the Mississippi and south of the Virginias and the Ohio river?

A. Something over twenty years.

Q. 21. Has the greater charge for the shorter than the longer haul, over the same line, in the same direction, the shorter haul being included in the longer, ever, to your knowledge, been made in that territory, except in cases of competition, in transportation to the longer-distance point?

A. I do not know that it has, sir, of my own observation.

Q. 22. Are not the rates by all lines from New York and Boston to Nashville, the same?

A. The rates by all lines, so far as I understand, are the same from Boston and New York to Nashville.

228 R. E. LUTZ, a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination.

By Mr. BAXTER:

Q. 1. State your name, age, residence and occupation.

A. R. E. Lutz; residence, Montgomery, Alabama: age, forty-six: freight traffic manager of the Atlanta & West Point railroad and the Western Railway of Alabama.

Q. 2. How long have you been engaged in the railroad transportation business and in what capacities?

A. Transportation and traffic, about twenty-eight years. I first started out as a telegraph operator, then as local agent, then as chief clerk in the general freight office, afterwards general agent, and then traffic manager.

Q. 3. The rates from New York via Bristol to Chattanooga, were in 1892, as shown by the report and opinion of the commission as follows:

Classes	1	2	3	4	5	6
Cents	114	98	86	73	60	49

The distance from New York via Bristol to Chattanooga is 901 miles. Please state whether or not, in your opinion, said rates are just or unjust, reasonable or unreasonable, and give your reason for any opinion you may express.

A. In my opinion, the rates as in effect from New York to Chattanooga are reasonable and just. There being no absolute standard by which the reasonableness of rates may be measured, makes it difficult, not being in possession of the statistics affecting the traffic in question, to determine conclusively as to the reasonableness and justness of such rates as are being used. It appears to me, however, that a fairly accurate conclusion can be arrived at by the comparison of the rates in effect to other points on the same line and also the rates in effect on other lines where the circumstances and conditions are similar.

We find that the rates from New York to Knoxville, Tennessee, via Bristol, 111 miles less than to Chattanooga, to be as follows:

Classes	1	2	3	4	5	6
Cents	100	85	70	55	48	40

a reasonable differential on account of the difference less than the rates to Chattanooga.

We find Rome, Georgia, over eighty miles further than to
229 Chattanooga, and to Atlanta, Georgia, 138 miles further than to Chattanooga, the all-rail rates via Bristol, to be as follows:

Classes	1	2	3	4	5	6
Cents	126	108	95	81	66	54

a reasonable differential on account of the difference higher than the rates to Chattanooga.

It is true that the rail and water rates to Atlanta and Rome are the same as to Chattanooga, but that is owing to the fact that the rail and water rates are made on the rates based on the steamship rates to the Atlantic Coast points of Charleston or Savannah, and the inland rates from those points, the same basis obtaining for making rail and water rates to Chattanooga and such rates to that point being likewise adopted by the all-rail lines.

The first six classes hardly give a fair idea of the reasonableness of the rates to Chattanooga, unless it is known and considered that these classes cover high-grade valuable goods that are shipped, as a rule, in small quantities, are frequently transferred and rehandled, thereby largely increasing the expense of the handling and giving rise for opportunity for the same to be damaged, robbed, stolen or lost, in which event the carriers have a heavy drain in the shape of claims on the revenue earned, the value of a small package of high-class goods amounting to many times the freight charges thereon.

Q. 5. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. No, sir.

Cross-examination.

By Mr. SHAVER:

Q. 1. Did you state in your answer to the direct interrogatories that the rates involved in this case from New York and Boston to Chattanooga, are just and reasonable in and of themselves, in your opinion?

A. Yes, sir.

Q. 2. The distance from Chattanooga to Nashville is 151 miles, by the Nashville, Chattanooga & St. Louis road, is it not?

A. I believe that is the distance.

Q. 3. Are the lower rates for the haul of 151 miles further, through to Nashville from New York and Boston, also, in your opinion, reasonable, in and of themselves?

230 A. Yes, sir, they are reasonable, brought about by active water competition to that point.

Q. 4. Do these rates to Nashville yield the carrier a revenue in excess of the cost of transportation?

A. Yes, sir, I believe they do.

Q. 5. Is a rate reasonable in and of itself, which does not yield the carrier a proper remuneration over and above the cost of the service of carriage?

A. No, I would not consider it a reasonable rate if it did not yield the carrier sufficient revenue over and above the cost of transportation.

Q. 6. Can it be ascertained whether a rate is reasonably remunerative to the carrier without first considering the cost or expense of the service of carriage?

A. That would be the only means we would have of knowing or trying to approximate as to about what the cost—that is, trying to find out the cost as near as you can of carrying a ton of freight per mile, or anything in excess of that, quite a number of things you have to take into consideration in saying whether that would be a profitable rate or not. For instance, you might at certain seasons of the year, haul certain freight on certain trains that had to move anyhow, whether they had one car or whether they had twenty. In that case you could probably move a car of freight or a ton of freight at much less expense than you could had you to provide special service, or if it were at other times of the year. There are times when we accept certain freights that we would not accept at other times. I will take the local freight, for instance, that will run between Atlanta and West Point. That train has got to run; we have got to pay the engineer and we have got to pay the crew; and by adding on probably one or two more cars or something of that kind, it probably would not add to the cost of the train but very little more. Now, if we had to go to work to perform a certain service for a certain class of low freight, we often could not afford to haul it; we would not haul it; we turn down lots of it.

Q. 7. The transportation of the hindmost car would cost the road as much for transporting it the same distance as it costs for the foremost car?

A. That would not always be the case for the very reason that the foremost car would not be switching back and forth as such, being attached to the engine and the wear and tear of that car, and the cost of repairs on that car and accidents to that would not be as great as the hindmost car that was constantly being switched from the point of shipment to the final destination. Going into
231 the switch so often might cause a draw-frame to be pulled out or a brake-beam broken, or something of that kind, and even if no accident happened to the car, there is obliged to be more wear and tear on that car.

Q. 8. Does not the cost or the expense of the service of transportation depend largely or to some extent on the length of the haul, other things being equal?

A. Yes, sir.

Q. 9. Other things being equal, is not the consumption of time greater, the greater the length of the haul?

A. Yes, sir.

Q. 10. Other things being equal, is not the consumption of fuel greater, the greater the length of the haul?

A. Yes, sir.

Q. 11. Other things being equal, is not the wear and tear of locomotives, cars, track and road-bed, etc., greater, the greater the length of the haul?

A. Yes, sir.

Q. 12. Other things being equal, is not the cost of keeping the road in repair or good condition greater, the greater the length of the road?

A. Yes, sir.

Q. 13. Other things being equal, does it not require more locomotives and cars and crews for running a train on a long road, than on a short one?

A. Yes, sir.

Q. 14. Other things being equal, does not distance add to the cost of building a road, and are not therefore, the fixed charges, such as interest on the capital, greater, the greater the length of the road?

A. Yes, sir.

Q. 15. Is not the expense to the carrier on strictly local hauls greater per ton per mile than on long through hauls?

A. Yes, sir.

Q. 16. How long have you been engaged in the railroad business in the territory east of the Mississippi and south of the Virginias and the Ohio river?

A. Nearly twenty-five years.

Q. 17. Has the greater charge for the shorter than the longer haul over the same line in the same direction the shorter haul being included in the longer, ever, to your personal knowledge, been made in that territory except in cases of competition in transportation to the longer-distance point?

A. No, sir.

Q. 18. Is not a rate under which traffic will move and
232 which is not so high, as to divert the traffic to other roads and lines, in your opinion, a reasonable rate?

A. Yes, sir.

Q. 19. In your examination this morning in the case of the Interstate Commerce Commission against the Western & Atlantic Railroad, *et al.*, involving rates from Cincinnati to Atlanta and to intermediate points between Chattanooga and Atlanta, you named a number of lines which actually and actively compete for business from Cincinnati to Chattanooga. Will you please state those lines in this case?

A. Those lines are as follows:

The Cincinnati, New Orleans & Texas Pacific railway, and the Louisville & Nashville railroad are the two most active competitors for freight from Cincinnati to Chattanooga.

The Chesapeake & Ohio railroad; Cincinnati, Hamilton & Dayton railroad; the Baltimore & Ohio Southwestern railroad, in connection with the Norfolk & Western railroad through Kenova, West Virginia, Ironton and Portsmouth, Ohio, likewise compete, Cincinnati to Chattanooga, especially now that the association has been

disbanded under which a territorial division of business was attempted between the western and eastern lines.

Not an impracticable route for business from Cincinnati to Chattanooga is via the Ohio and Mississippi rivers to Memphis and thence via the Memphis & Charleston railroad.

There is also water competition via the Ohio and Tennessee rivers.

Q. 20. Did you not also in your examination in that case mention that Chattanooga is on the Tennessee river?

A. Yes, sir.

Q. 21. Does that give Chattanooga water communication?

A. Yes, sir.

Q. 22. With what points?

A. Most all points on the Ohio river and all points via the Ohio river.

Q. 23. Will you please name the roads that actually reach Chattanooga?

A. The Nashville, Chattanooga & St. Louis railroad.

The Cincinnati, New Orleans & Texas Pacific railway.

The Memphis & Charleston railroad.

The Chattanooga Southern railway.

The Southern railway.

The Western & Atlantic railroad.

233 The Chattanooga, Rome & Columbus railroad.

Q. 24. What roads actually reach Nashville?

A. The Nashville, Chattanooga & St. Louis railway, and the Louisville & Nashville railroad.

Q. 25. State, if you know whether or not the Nashville, Chattanooga & St. Louis railway is owned by or under the control of the Louisville & Nashville system?

A. Not to my knowledge; it may or may not be; I do not know that it is.

NASHVILLE, TENN., *July 17th*, 1897.

W. A. WINBURN, a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination.

By Mr. BAXTER:

Q. 1. State your name, age, residence and occupation.

A. W. A. Winburn; age 37; residence, Savannah, Ga.; occupation, general freight agent of the Central Railway Company.

Q. 2. How long have you been engaged in the railroad transportation business, and in what capacities?

A. Since 1881; as clerk in the local freight office; clerk in the assistant general freight office; division freight and passenger agent, and general freight agent, respectively.

Q. 3. Did the proportions which the Central Railway of Georgia received on the different classes of freight shipped from New York and Boston via Savannah destined to Nashville, in 1892, exceed the

additional cost to the said Central of Georgia railway, of the movement of said freight?

A. I think they did.

Q. 4. The report and opinion of the commission in this case shows that the rates from New York and Boston to Chattanooga were as follows:

Classes	1	2	3	4	5	6
Cents	114	98	86	73	60	49

In your opinion were the above rates just or unjust, reasonable or unreasonable? Please give your reasons for any opinion you may express.

A. I think they were just and reasonably low.

First, because they were not higher than to surrounding points similarly situated.

Second, because the revenue derived by the Central of
234 Georgia railway on these and other tariffs constructed on the same general plan has not yielded a sufficient income to pay the interest on the bonded debt of the company.

Q. 5. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. I do not think I know of anything else.

Cross-examination.

By Mr. SHAVER:

Q. 1. Are the rates from New York and other northeastern cities involved in this case to Chattanooga, in your opinion, reasonable in and of themselves?

A. I think so.

Q. 2. Are the lower rates from New York and other northeastern cities on hauls through Chattanooga and 151 miles further to Nashville also, in your opinion, reasonable, in and of themselves?

A. We would like to see them higher, but they are rates made by the trunk lines and their connections through the Ohio River gateways, I believe, and pay us, we think, a margin of profit above the cost of transportation, and we choose to compete for the business.

Q. 3. About how far is it by the Cincinnati, New Orleans & Texas Pacific railway from Cincinnati to Chattanooga?

A. 335 miles.

Q. 4. How far is it from Cincinnati by the Louisville & Nashville railroad to Nashville?

A. 295 miles.

Q. 5. Is a rate, in your opinion, a reasonable rate, which does not yield the carrier a proper remuneration over and above the cost of the service of carriage?

A. That depends on what we call a "proper remuneration" above the cost of carriage. It seems to me there are a great many cases

where a rate would be reasonable if it were above the cost of carriage to any extent, dependent largely on the movement of traffic in different directions.

Q. 6. Can it be ascertained whether a rate is reasonably remunerative to the carrier without first considering the cost or expense of the service of carriage?

A. The cost of carriage is an uncertain quantity, varying on almost every class of freight, and varying on the same classes of freight at different times and moving in different directions.

235 Q. 7. I understand that, but that is not an answer to my question. My question is, can it be ascertained whether a rate is reasonably remunerative to the carrier without first considering the cost or the expense of the service of carriage? In other words, can it be ascertained whether a rate pays a carrier a proper remuneration without first considering the expense of the cost of carriage?

A. As it is impossible to ascertain the cost of carriage in a great majority of cases, it is difficult to tell whether any particular rate on any particular traffic will pay a profit. We have as a guide, the general tariffs; we know what the out-turn is from those tariffs and we vary them as necessity requires, and after all, when we get down to rate-making on heavy commodities, which require low rates of transportation, it is largely a rule of thumb process. By observation and experience and practice, we ought to know, and we try to know whether we are going to lose money on a particular shipment. If we think we are going to lose money, we will not take it. If we think it pays, we will take it. Whether we always make a profit we do not know.

Q. 8. Is it your opinion, then, that it is impossible for a carrier to ascertain whether a given rate is reasonably remunerative?

A. My answer had reference particularly to exceptionally low rates, that is rates lower than the general standard of rates. In cases of this kind, I think it is frequently impossible to tell whether you will make or lose money for the carriage.

Q. 9. Does not the cost or the expense of the service of transportation depend largely or to some extent on the length of the haul, other things being equal?

A. All other things being the same, I would say that the cost of the haul per mile would decrease as the length of the haul increased, not in any given ratio, but to some extent at least.

Q. 10. Would not the aggregate cost increase as the length of the haul increased, other things being equal?

A. All other conditions being equal; yes.

Q. 11. All other things being equal, is not the consumption of time, greater, the greater the length of the haul?

A. Yes, sir.

Q. 12. All other things being equal, is not the consumption of fuel greater, the greater the length of the haul?

A. I do not know much about the consumption of fuel. I would not like to give an expert opinion on that, as I do not handle any fuel.

236 Q. 13. All other things being equal, is not the wear and tear on locomotives, cars, tracks, road-bed, etc., greater, the greater the length of the haul?

A. I think so.

Q. 14. Other things being equal, is not the cost of keeping the road in repair or in good condition greater, the greater the length of the road?

A. That I know nothing about at all.

Q. 15. Other things being equal, does it not require more locomotives and crews for running trains on a long road than on a short one?

A. I think that depends a great deal upon how much longer the long road is than the short road.

Q. 16. Other things being equal, does not distance add to the cost of building a road, and are not therefore the fixed charges, such as interest on the capital invested, greater, the greater the length of the road?

A. Yes, sir.

Q. 17. How long have you been engaged in the railroad business in the territory east of the Mississippi and south of the Virginias and the Ohio river?

A. Sixteen years.

Q. 18. Has the greater charge for the shorter than the longer haul over the same line in the same direction, the shorter haul being included in the longer, ever, to your personal knowledge, been made in that territory, except in cases of competition in transportation to the longer-distance point?

A. I can think of no such case at present.

Q. 19. Is not a rate under which traffic will move, and which is not so high as to divert the traffic to other roads or lines, in your opinion a reasonable rate?

A. Yes, sir.

NASHVILLE, TENN., *July 19th*, 1897.

GEO. R. KNOX, a witness on behalf of defendant-, having been duly sworn, testified as follows:

Direct examination.

By Mr. BAXTER:

Q. 1. State your name, age, residence and occupation.

A. Geo. R. Knox; 52; Nashville, Tenn.; general freight agent, Nashville, Chattanooga & St. Louis railway.

Q. 2. How long have you been connected with the railroad freight transportation business, and in what capacities?

237 A. I was in the local freight office, and in the accounting department for some time before entering the general freight office of the Nashville, Chattanooga & St. Louis railway. I have been in the general freight office since March, 1867, as subordinate clerk, chief clerk, assistant general freight agent, and general freight agent.

Q. 3. It appears from the report and opinion of the commission in this case, that the rates from New York and Boston to Nashville, in December, 1892, were as follows:

Classes	1	2	3	4	5	6
Cents	91	78	60	42	36	31

What were the proportions in cents per hundred pounds received by the Nashville, Chattanooga & St. Louis railway between Chattanooga and Nashville on each of the classes of freight shipped from New York and Boston via Chattanooga to Nashville?

A. Said proportions are as follows:

From Boston:

Route.	1	2	3	4	5	6	Dry goods, boots and shoes.
Hagerstown	12.5	10.7	8.2	5.8	4.9	4.2	12.5
Alexandria	10.	8.5	6.4	3.7	3.5	3.1	8.9
Savannah	13.5	11.6	8.7	5.8	5.	4.3	12.5
Charleston	10.5	8.9	6.2	3.7	2.8	2.5	9.4
Norfolk	11.4	9.9	7.5	5 2	4.5	4.	10.5
Portsmouth	13.7	11.8	8.9	6.	5.1	4.4	12.7

From New York:

Hagerstown	14.3	12.2	9.4	6.6	5.9	4.9	14.3
Alexandria	11.2	9.7	6.8	4.8	4.2	3.7	10.
Savannah	14.3	12.3	9.2	6.2	5.2	4.5	13.2
Charleston	13.4	9.8	8.7	5.9	5.	4.3	12.3
Norfolk	12.2	10.5	7.9	5.2	4.4	3.8	11.3
Portsmouth	14.1	12.1	9.1	6.	5.1	4.3	13.

Q. 4. What did those proportions amount to in cents per ton per mile on each of the classes?

A. The proportions amounted in cents per ton per mile on each of the classes as follows:

From Boston:

	1	2	3	4	5	6	D. goods, B. & S.	Total.	Average.
Hagerstown	1.6	1.4	1.1	.76	.65	.55	1.6	7.66	1.10
Alexandria	1.3	1.1	.84	.48	.45	.41	1.1	5.68	.81
Savannah	1.7	1.5	1.1	.77	.67	.57	1.6	7.91	1.13
Charleston	1.4	1.2	.83	.50	.37	.33	1.2	5.83	.83
Norfolk	1.5	1.3	1.	.69	.60	.52	1.4	7.01	1.00
Portsmouth	1.8	1.5	1.1	.80	.68	.59	1.7	8.17	1.17
Total	9.3	8.	5.97	4.	3.42	2.97	8.6	42.26	6.04
Average	1.55	1.33	.99	.67	.57	.50	1.43		7.04

General average per ton 1.01

238 From New York:

	1	2	3	4	5	6	D. goods, B. & S.	Total.	Average.
Hagerstown	1.9	1.6	1.2	.90	.70	.65	1.9	8.85	1.26
Alexandria	1.5	1.3	.90	.63	.55	.49	1.3	6.67	.95
Savannah	1.9	1.6	1.2	.90	.69	.60	1.7	8.59	1.23
Charleston	1.8	1.3	1.15	.77	.66	.56	1.6	7.84	1.12
Norfolk	1.6	1.4	1.	.68	.58	.50	1.5	7.26	1.04
Portsmouth	1.9	1.6	1.2	.78	.70	.57	1.7	8.45	1.21
Total	10.6	8.8	6.65	4.66	3.88	3.37	9.7	47.66	6.81
Average	1.77	1.47	1.11	.78	.65	.56	1.60		7.94
General average per ton per mile									1.13

Q. 5. Did the proportions which said road received on said different classes of freight shipped from New York and Boston via Chattanooga to Nashville in 1892 exceed the additional cost to said road of the movement of said freight?

A. It did.

Q. 6. Suppose the rates from New York and Boston via Chattanooga to Nashville were increased so as to be made the same as the rates from New York and Boston to Chattanooga, what would be the effect upon the Nashville, Chattanooga & St. Louis railway, as to its being able to obtain any of said traffic?

A. It would receive none of it at those rates.

Q. 7. Why not?

A. It would still reach Nashville by other routes at the present rates.

Q. 8. What mount of revenue is annually received by the Nashville, Chattanooga & St. Louis railway from traffic shipped from New York, Boston, and other northeastern cities via Chattanooga to Nashville?

A. Well, it will run from twenty to twenty-five thousand dollars annually.

Q. 9. I understand, then, that the loss to the Nashville, Chattanooga & St. Louis railway, if it should raise the rates to Nashville, so as to be as high as those to Chattanooga, would amount to from twenty to twenty-five thousand dollars a year?

A. Yes, sir.

Q. 10. The rates from New York and Boston to Chattanooga in 1892 were as follows:

Classes	1	2	3	4	5	6
Cents	114	98	86	73	60	49

State whether said rates from New York and Boston to Chattanooga were just or unjust, reasonable or unreasonable, and give your reasons for any opinion you may express.

A. I consider the rates from New York and Boston to Chattanooga just and reasonable for the reason that they do not
239 allow the carriers exorbitant revenue for the service performed; furthermore, that they compare favorably with other rates for similar distances and services in the same territory

Q. 11. Please state each route, whether rail, water, or rail and water, which actually competed in 1892 for the transportation of freight from New York via Chattanooga to Nashville.

The routes were as follows:

From Boston:

Route No. 1:

The New England & Savannah Steamship Company via Savannah, three hundred miles.

Central of Georgia Railway Company, via Atlanta, 294 miles.

Western & Atlantic railroad, via Chattanooga, 138 miles.

Nashville, Chattanooga & St. Louis railway, via Nashville, 151 miles.

Route No. 2:

Clyde steamship line, via Charleston, 300 miles.

South Carolina & Georgia railroad, via Augusta, 138 miles.

Georgia railroad, via Atlanta, 171 miles.

Western & Atlantic railroad, via Chattanooga, 138 miles.

Nashville, Chattanooga & St. Louis railway, via Nashville, 151 miles.

Route No. 3:

Merchants' & Miners' Transportation Co., via Norfolk, three hundred miles.

Norfolk & Western railroad, via Bristol, 408 miles.

Southern railway, via Chattanooga, 242 miles.

Nashville, Chattanooga & St. Louis railway, via Nashville, 151 miles.

Route No. 4:

Merchants' & Miners' Transportation Co., via Portsmouth, 300 miles.

Seaboard air line, via Atlanta, 595 miles.

Western & Atlantic railroad, via Chattanooga, 138 miles.

Nashville, Chattanooga & St. Louis railway, 151 miles.

Route No. 5:

Merchants' & Miners' Transportation Co., via Norfolk, 300 miles.

240 Southern railway, via Chattanooga, 626 miles.

Nashville, Chattanooga & St. Louis railway, 151 miles.

Route No. 6:

Merchants' & Miners' Transportation Co., via Pinner's Point, 300 miles.

Atlantic Coast line, via Denmark, 390 miles.

South Carolina & Georgia railway, via Augusta, 57 miles.

Georgia railroad, via Atlanta, 171 miles.

Western & Atlantic railroad, via Chattanooga, 138 miles.

Nashville, Chattanooga & St. Louis railway, 151 miles.

Route No. 7—Atlantic Coast Dispatch:

New York & New England railroad, via Willimantic, 86 miles.
New York, New Haven & Hartford, via New York, 127 miles.
Pennsylvania railroad, via Delmar, 215 miles.
New York, Philadelphia & Norfolk railroad, via Pinner's Point, 131 miles.
Atlantic Coast line, via Denmark, 390 miles.
South Carolina & Georgia railroad, via Augusta, 57 miles.
Georgia railroad, via Atlanta, 171 miles.
Western & Atlantic, via Chattanooga, 138 miles.
Nashville, Chattanooga & St. Louis, 151 miles.

Route No. 8—Atlantic Coast Dispatch:

New York, New Haven & Hartford, via New York, via New London, 234 miles.
Pennsylvania railroad, via Delmar, 215 miles.
New York, Philadelphia & Norfolk, via Pinner's Point, 131 miles.
Atlantic Coast line, via Denmark, 390 miles.
South Carolina & Georgia railroad, via Augusta, 57 miles.
Georgia railway, via Atlanta, 171 miles.
Western & Atlantic railroad, via Chattanooga, 138 miles.
Nashville, Chattanooga & St. Louis railway, 151 miles.

Route No. 9—Atlantic Coast Dispatch:

Boston & Maine railroad, via Northampton, 105 miles.
New York, New Haven & Hartford railroad, via New York, 151 miles.
241 Pennsylvania railroad, via Delmar, 215 miles.
New York, Philadelphia & Norfolk railroad, via Pinner's Point, 131 miles.
Atlantic Coast line, via Denmark, 390 miles.
South Carolina & Georgia railroad, via Augusta, 57 miles.
Georgia railway, via Atlanta, 171 miles.
Western & Atlantic railroad, via Chattanooga, 138 miles.
Nashville, Chattanooga & St. Louis railway, 151 miles.

Route No. 10—Atlantic Coast Dispatch:

Fitchburg railroad, via Shelburne Falls, 119 miles.
New York, New Haven & Hartford via New York, 174 miles.
Pennsylvania railroad, via Delmar, 215 miles.
New York, Philadelphia & Norfolk, via Pinner's Point, 131 miles.
Atlantic Coast line, via Denmark, 390 miles.
South Carolina & Georgia railroad, via Augusta, 57 miles.
Georgia railway, via Atlanta, 171 miles.
Western & Atlantic railroad, via Chattanooga, 138 miles.
Nashville, Chattanooga & St. Louis, 151 miles.

Route No. 11—Richmond & Danville Dispatch:

New York & New England railroad, via Willimantic, 86 miles.
New York, New Haven & Hartford, via New York, 127 miles.

Pennsylvania railroad, via Alexandria, 237 miles.
Southern railway, via Chattanooga, 710 miles.
Nashville, Chattanooga & St. Louis railway, 151 miles.

Route No. 12—Richmond & Danville Despatch:

New York, New Haven & Hartford railroad, via New York, 234 miles.
Pennsylvania railroad, via Alexandria, 237 miles.
Southern railway, via Chattanooga, 710 miles.
Nashville, Chattanooga & St. Louis railway, 151 miles.

Route No. 11—Richmond & Danville Despatch:

Boston & Maine railroad, via Northampton, 105 miles.
242 New York, New Haven & Hartford, via New York, 151 miles.
Pennsylvania railroad, via Alexandria, 237 miles.
Southern railway, via Chattanooga, 710 miles.
Nashville, Chattanooga & St. Louis railway, 151 miles.

Route No. 14—Richmond & Danville Despatch:

The Fitchburg railroad, via Shelburne Falls, 119 miles.
New York, New Haven & Hartford railroad, via New York, 174 miles.
Pennsylvania railroad, via Alexandria, 237 miles.
Southern railway, via Chattanooga, 710 miles.
Nashville, Chattanooga & St. Louis railway, 151 miles.

Route No. 15—Seaboard Dispatch:

New York & New England railroad, via Willimantic, 86 miles.
New York, New Haven & Hartford railroad, via New York, 127 miles.
Pennsylvania railroad, via Delmar, 215 miles.
New York, Philadelphia & Norfolk railroad, via Portsmouth, 131 miles.
Seaboard air line, via Atlanta, 595 miles.
Western & Atlantic railroad, via Chattanooga, 138 miles.
Nashville, Chattanooga & St. Louis railway, via Nashville, 151 miles.

Route No. 16—Seaboard Dispatch:

New York, New Haven & Hartford, via New London, New York, 234 miles.
Pennsylvania railroad, via Delmar, 215 miles.
New York, Philadelphia & Norfolk railroad, via Portsmouth, 131 miles.
Seaboard air line, via Atlanta, 595 miles.
Western & Atlantic railroad, via Chattanooga, 138 miles.
Nashville, Chattanooga & St. Louis railway, 151 miles.

Route No. 17—Seaboard Dispatch:

Boston & Maine railroad, via Northampton, 105 miles.

New York, New Haven & Hartford railroad, via New York, 151 miles.
Pennsylvania railroad, via Delmar, 215 miles.
243 New York, Philadelphia & Norfolk railroad, via Portsmouth, 131 miles.
Seaboard air line, via Atlanta, 595 miles.
Western & Atlantic railroad, via Chattanooga, 138 miles.
Nashville, Chattanooga & St. Louis railway, 151 miles.

Route No. 18—Seaboard Dispatch:

Fitchburg railrcad, via Shelburne Falls, 119 miles.
New York, New Haven & Hartford railroad, via New York, 174 miles.
Pennsylvania railroad, via Delmar, 215 miles.
New York, Philadelphia & Norfolk railroad, via Portsmouth, 131 miles.
Seaboard air line, via Atlanta, 595 miles.
Western & Atlantic railroad, via Chattanooga, 138 miles.
Nashville, Chattanooga & St. Louis railway, 151 miles.

Route No. 19—Great Southern Dispatch:

New York & New England railroad, via Willimantic, 86 miles.
New York, New Haven & Hartford railroad, via New York, 127 miles.
Pennsylvania railroad, via Harrisburg, 195 miles.
Cumberland Valley railroad, via Hagerstown, 74 miles.
Norfolk & Western railroad, via Bristol, 390 miles.
Southern railway, via Chattanooga, 242 miles.
Nashville, Chattanooga & St. Louis railway, 151 miles.

Route No. 20—Great Southern Dispatch:

Boston & Maine railroad, via Northampton, 105 miles.
New York, New Haven & Hartford railroad, via New York, 151 miles.
Pennsylvania railroad, via Harrisburg, 195 miles.
Cumberland Valley railroad, via Hagerstown, 74 miles.
Norfolk & Western railroad, via Bristol, 390 miles.
Southern railway, via Chattanooga, 242 miles.
Nashville, Chattanooga & St. Louis railway, 151 miles.

244 Route No. 21—Great Southern Dispatch:

Fitchburgh railroad, via Shelburne Falls, 119 miles.
New York, New Haven & Hartford railroad, via New York, 174 miles.
Pennsylvania railroad, via Harrisburg, 195 miles.
Cumberland Valley railroad, via Hagerstown, 74 miles.
Norfolk & Western railroad, via Bristol, 390 miles.
Southern railway, via Chattanooga, 242 miles.
Nashville, Chattanooga & St. Louis railway, 151 miles.

Route No. 22—Southern States Dispatch:

New York & New England railroad, via Willimantic, 86 miles.
New York, New Haven & Hartford railroad, via New York, 127 miles.
Lehigh Valley railroad, via Allentown, 93 miles.
Philadelphia & Reading railroad, via Shippensburg, 131 miles.
Western Maryland railroad, via Hagerstown, 46 miles.
Norfolk & Western railroad, via Bristol, 390 miles.
Southern railway, via Chattanooga, 242 miles.
Nashville, Chattanooga & St. Louis railway, 151 miles.

Route No. 23—Southern States Dispatch:

Boston & Maine railroad, via Northampton, 105 miles.
New York, New Haven & Hartford railroad, via New York, 161 miles.
Lehigh Valley railroad, via Allentown, 93 miles.
Philadelphia & Reading railroad, via Shippensburg, 131 miles.
Western Maryland railroad, via Hagerstown, 46 miles.
Norfolk & Western railroad, via Bristol, 490 miles.
Southern railway, via Chattanooga, 242 miles.
Nashville, Chattanooga & St. Louis railway, 151 miles.

Route No. 24—Southern States Dispatch:

Fitchburgh railroad, via Shelburne Falls, 119 miles.
New York, New Haven & Hartford railroad, via New York, 174 miles.
Lehigh Valley railroad, via Allentown, 93 miles.
245 Philadelphia & Reading railroad, via Shippensburg, 131 miles.
Western Maryland railroad, via Hagerstown, 46 miles.
Norfolk & Western railroad, via Bristol, 390 miles.
Southern railway, via Chattanooga, 242 miles.
Nashville, Chattanooga & St. Louis railway, 151 miles.

Route No. 25—Southern States Dispatch:

New York & New England railroad, via Willimantic, 86 miles.
New York, New Haven & Hartford railroad, via New York, 127 miles.
Central Railroad of New Jersey, via Allentown, 90 miles.
Philadelphia & Reading railroad, via Shippensburg, 131 miles.
Western Maryland railroad, via Bristol, 390 miles.
Southern railway, via Chattanooga, 242 miles.
Nashville, Chattanooga & St. Louis railway, 151 miles.

Route No. 26—Southern States Dispatch:

Boston & Maine railroad, via Northampton, 105 miles.
New York, New Haven & Hartford railroad, via New York, 151 miles.
Central Railroad of New Jersey, via Allentown, 90 miles.
Philadelphia & Reading railroad, via Shippensburg, 131 miles.

Western Maryland railroad, via Hagerstown, 46 miles.
Norfolk & Western railroad, via Bristol, 390 miles.
Southern railway, via Chattanooga, 242 miles.
Nashville, Chattanooga & St. Louis railway, 151 miles.

Route No. 27—Southern States Dispatch:

Fitchburg railroad, via Shelburne Falls, 119 miles.
New York, New Haven & Hartford railroad, via New York, 174 miles.
Central Railroad of New Jersey, via Allentown, 90 miles.
Philadelphia & Reading railroad, via Shippensburg, 131 miles.
Western Maryland railroad, via Hagerstown, 46 miles.
246 Norfolk & Western railroad, via Bristol, 390 miles.
Southern railway, via Chattanooga, 242 miles.
Nashville, Chattanooga & St. Louis railway, 151 miles.

From New York.

Route No. 28:

Ocean Steamship Company, via Savannah, 250 miles.
Central of Georgia railway, via Atlanta, 294 miles.
Western & Atlantic railway, via Chattanooga, 138 miles.
Nashville, Chattanooga & St. Louis railway, 151 miles.

Route No. 29:

Clyde Steamship Co., via Charlestown, 250 miles.
South Carolina & Georgia railroad, via Augusta, 138 miles.
Georgia railway, via Atlanta, 171 miles.
Western & Atlantic railway, via Chattanooga, 138 miles.
Nashville, Chattanooga & St. Louis railway, 151 miles.

Route No. 30:

Old Dominion Steamship Company, via Norfolk, 160 miles.
Norfolk & Western railroad, via Bristol, 408 miles.
Southern railway, via Chattanooga, 242 miles.
Nashville, Chattanooga & St. Louis railway, 151 miles.

Route No. 31:

Old Dominion Steamship Company, via Portsmouth, 160 miles.
Seaboard air line, via Atlanta, 595 miles.
Western & Atlantic railway, via Chattanooga, 138 miles.
Nashville, Chattanooga & St. Louis railway, 151 miles.

Route No. 32:

Old Dominion Steamship Company, via Norfolk, 160 miles.
Southern railway, via Chattanooga, 626 miles.
Nashville, Chattanooga & St. Louis railway, 151 miles.

247 Route No. 33:

Old Dominion Steamship Company, via Pinner's Point, 160 miles.
Atlantic Coast line, via Denmark, 390 miles.

South Carolina & Georgia railroad, via Augusta, 57 miles.
Western & Atlantic railway, via Chattanooga, 138 miles.
Nashville, Chattanooga & St. Louis railway, 151 miles.

Route No. 34—Southern States Dispatch:

Lehigh Valley railroad, via Allentown, 93 miles.
Philadelphia & Reading railroad, via Shippensburg, 131 miles.
Western Maryland railroad, via Hagerstown, 46 miles.
Norfolk & Western railroad, via Bristol, 390 miles.
Southern railway, via Chattanooga, 242 miles.
Nashville, Chattanooga & St. Louis railway, 151 miles.

Route No. 35—Southern States Dispatch:

Central Railroad of New Jersey, via Allentown, 90 miles.
Philadelphia & Reading railroad, via Shippensburg, 131 miles.
Western Maryland railroad, via Hagerstown, 46 miles.
Norfolk & Western railroad, via Bristol, 390 miles.
Southern railway, via Chattanooga, 242 miles.
Nashville, Chattanooga & St. Louis railway, 151 miles.

Route No. 36—Great Southern Dispatch:

Pennsylvania railroad, via Harrisburg, 195 miles.
Cumberland Valley railroad, via Hagerstown, 74 miles.
Norfolk & Western railroad, via Bristol, 392 miles.
Southern railway, via Chattanooga, 242 miles.
Nashville, Chattanooga & St. Louis railway, 151 miles.

Route No. 37—Richmond & Danville Dispatch:

Pennsylvania railroad, via Alexandria, 237 miles.
Southern railway, via Chattanooga, 710 miles.
Nashville, Chattanooga & St. Louis railway, 151 miles.

248 Route No. 38—Atlantic Coast Dispatch:

Pennsylvania railroad, via Delmar, 215 miles.
New York, Philadelphia & Norfolk, via Pitmer's Point, 131 miles.
Atlantic Coast line, via Denmark, 390 miles.
South Carolina & Georgia railroad, via Augusta, 57 miles.
Georgia railway, via Atlanta, 171 miles.
Western & Atlantic railway, via Chattanooga, 138 miles.
Nashville, Chattanooga & St. Louis railway, 151 miles.

Route No. 39:

Central Railroad of New Jersey, via Bound Brook, 31 miles.
Philadelphia & Reading, via Philadelphia, 60 miles.
Baltimore & Ohio railroad, via Alexandria, 144 miles.
Southern railway, via Chattanooga, 710 miles.
Nashville, Chattanooga & St. Louis railway, 151 miles.

Route No. 40—Seaboard Dispatch:

Pennsylvania railroad, via Delmar, 215 miles.
New York, Philadelphia & Norfolk railroad, via Portsmouth, 131 miles.

Seaboard air line, via Atlanta, 595 miles.
Western & Atlantic railway, via Chattanooga, 138 miles.
Nashville, Chattanooga & St. Louis railway, 151 miles.

Q. 12. State each of the carriers that composes each of said routes.

A. The carriers are shown in my answer to the last question.

Q. 13. State the mileage of each of said carriers.

A. That is also shown in the same answer.

Q. 14. State how the through rates from New York and Boston via Chattanooga to Nashville were divided in 1892, between the different carriers composing each of said routes.

A. The divisions in 1892 and 1896 were as follows: (sic)

Q. 15. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to
249 the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. I think these questions and answers have covered the ground quite fully.

Cross-examination.

By Mr. SHAVER:

Q. 1. What relation do you sustain to the Nashville, Chattanooga & St. Louis railway?

A. I am the general freight agent.

Q. 2. Is not the Nashville, Chattanooga & St. Louis railway under the control of the Louisville & Nashville railroad?

A. Not that I know of.

Q. 3. Is it not owned by the Louisville & Nashville railroad?

A. I have no knowledge as to how the stock is owned. I have no access to the stock books, and never have had. All I know about that is general rumor in the newspapers. It is generally supposed that the Louisville & Nashville owns a little over half of the stock of the Nashville, Chattanooga & St. Louis railway, but I have no positive knowledge on that point.

Q. 4. How many roads actually reach Nashville?

A. Two separate and distinct roads, that is different lines of railway.

Q. 5. What are those two roads?

A. The Louisville & Nashville system, and the Nashville, Chattanooga & St. Louis system.

Q. 6. How many roads actually reach Chattanooga?

A. At the present time, the Southern railway, the Nashville, Chattanooga & St. Louis railway, the Chattanooga Southern railway, the Memphis & Charleston railroad. I believe that is all. The Southern railway has various lines reaching Chattanooga, but only one system, including the Chattanooga Southern, which is a short local line. I believe there are only four different systems.

Q. 7. How many different roads under the Southern system reach Chattanooga, and what are they?

A. The East Tennessee division, the Alabama Great Southern division. I should have said five systems, the Cincinnati Southern is one; that is a mixed ownership; the Southern owns half, and the Cincinnati, Hamilton & Dayton owns half. Now to come back to this other question, there is the East Tennessee division, the Alabama Great Southern division, the Georgia division, I think they call it, running from Chattanooga southward through Rome
250 to Atlanta. Now, as I say, the Cincinnati Southern, I understand, is owned jointly by the Southern railway and the Cincinnati, Hamilton & Dayton, half and half. I do not know whether they call that a division of the Southern railway or not.

Q. 8. All the lines or routes which you named in your direct examination from New York and Boston to Nashville are through Chattanooga, are they not?

A. Yes, sir.

Q. 9. Does not the bulk of the traffic from New York and other northeastern cities pass through Chattanooga to Nashville?

A. For a number of years, I believe that is true, but back of that the reverse was true. There was a time when perhaps ninety per cent. of the business reached Nashville through Cincinnati and Louisville and other northern gateways.

Q. 10. How long ago was that the case?

A. Probably from 1865 to the year 1875, or thereabouts. Of course this is just an estimate, I am giving you.

Q. 11. What is the distance from Cincinnati to Chattanooga by the Cincinnati, New Orleans & Texas Pacific railway?

A. 330 miles.

Q. 12. What is the distance from Cincinnati to Nashville by the Louisville & Nashville railroad?

A. 295 miles.

Q. 13. The rates from New York and other northeastern cities to Chattanooga are as follows:

Classes	1	2	3	4	5	6
Cents	114	98	86	73	60	49

are they not?

A. I think those are correct, though I could not say without checking them.

Q. 14. On the haul from New York and other northeastern cities through Chattanooga, 151 miles further on to Nashville, the rates are as follows:

Classes	1	2	3	4	5	6
Cents	91	78	60	42	36	31

are they not?

A. I believe those are correct.

Q. 15. You have stated in your direct examination that these rates to Chattanooga are just and reasonable, in your opinion, I believe?

A. Yes, sir.

Q. 16. Are you also of the opinion that the rates to Nashville are just and reasonable in and of themselves?

A. Well, that is a very broad question, and in order to answer properly, will require quite a lengthy answer.

251 Q. 17. You could answer it yes or no. I simply asked the question, whether the Nashville rates are, in your opinion, reasonable in and of themselves?

A. We would charge more if we could get it up to Nashville.

Q. 18. Then in your opinion they are not just and reasonable, in and of themselves? You would not charge more than just and reasonable rates, would you?

A. No, I would not charge more than a just and reasonable rate.

Q. 19. Do these rates to Nashville pay anything in excess of the cost of service of carriage?

A. Yes, sir. I would like to make my answer to the last question a little longer, if it is allowable, In other words, yes or no does not always give an intelligent answer. One reason why those rates are profitable to the Nashville, Chattanooga & St. Louis railway is that we nearly always have empty cars moving northward. It affords loading for those empty cars. That is the reason it proves more profitable than if moving in the opposite direction, where we seldom have empty cars.

Q. 20. Is a rate, in your opinion, reasonable, which does not yield a carrier a proper remuneration over and above the cost of the service of carriage?

A. No, I do not think it is.

Q. 21. Does not the cost or expense of the service of transportation depend largely or to some extent on the length of the haul, other things being equal?

A. That is one of the factors that enters into the cost, but only one.

Q. 22. Other things being equal, is not the consumption of time greater, the greater the length of the haul?

A. It is.

Q. 23. Other things being equal, is not the consumption of fuel greater, the greater the length of the haul?

A. It is.

Q. 24. Other things being equal, is not the wear and tear on locomotives, cars, tracks, road-beds, etc., greater, the greater the length of the haul?

A. Yes, sir.

Q. 25. Other things being equal is not the cost of keeping the road in repair or in good condition, greater, the greater the length of the road?

A. It is.

Q. 26. Other things being equal, does it not require more locomotives and cars and crews for running trains on a long road, than on a short one?

A. It does.

252 Q. 27. Other things being equal, does not distance add to the cost of building the road, and are not therefore the fixed charges, such as interest on the capital invested greater, the greater the length of the road?

A. Where all things are equal, that is true.

Q. 28. Is not the expense to the carrier of strictly local hauls greater per ton per mile than on long through hauls?

A. It is.

Q. 29. How long have you been engaged in the railroad business in the territory east of the Mississippi and south of the Virginias and the Ohio river?

A. Continuously, since December, 1865.

Q. 30. Has the greater charge for the shorter than the longer haul over the same line in the same direction, the shorter haul being included in the longer, ever to your personal knowledge, been made in that territory except in cases of competition in transportation to the longer-distance point?

A. Well, that word "competition" is a very broad one. Sometimes there is competition of products as well as competition of lines, competition of markets, and letting the word "competition" include all branches of the subject, then I would answer that it has never been made except to meet competition—letting the word "competition" cover all branches of the subject, that is competition of markets, product with product, competition of line and line, and competition of rail with water.

Q. 31. Is there competition of markets without there being also competition in transportation?

A. Yes, sir.

Q. 32. Well, name an instance?

A. We have right on our own line here, two towns, selling the same product competing with each other, shipping over the same road, both being local points. For instance, there is a pipe foundry at South Pittsburg, and another at Bridgeport. Both are local to our line, and both of which compete strongly with each other in selling their pipes to the markets of the country.

Q. 33. Is there any greater charge for the shorter than the longer haul?

A. No, in that case the charge is the same.

Q. 34. I am referring to cases of a greater charge for the shorter haul. Is that greater charge ever made except in the case of competition in transportation, to your personal knowledge?

A. I cannot for the moment call to mind such a case,
253 though I am quite sure there have been such cases. There is a case in point from Nashville to Hickman. There is only one line from Nashville to Hickman, and yet the rates to Hickman are less than the rates to points this side of Hickman; there is only one line; that is competition of market with market. Nashville reaches Hickman, Ky., over the Western division of our road; St. Louis reaches Hickman not only by rail, but also by the Mississippi River boats, at low rates, so that Nashville would be unable to sell any goods in Hickman, and therefore we were forced to make low

rates to Hickman from Nashville. They were made to meet the competition of St. Louis and other markets reaching Hickman by river. We do not make as low rates to the other points this side of Hickman, notwithstanding there is only one road between here and Hickman; no other line from here to Hickman; I never heard of freight going from Nashville to Hickman except over our road.

Q. 35. Is that not a case of competition between your line to Hickman and the lines from St. Louis to Hickman?

A. It is what I call competition of market with market.

Q. 36. Does it not also involve the competition between transportation lines from different markets?

A. Indirectly, it does, yes, that is true. St. Louis has her low rates.

Q. 37. Is not a rate under which traffic will move, and which is not so high as to divert the traffic from other roads or lines, in your opinion, a reasonable rate?

A. Yes, sir, I think it is.

Q. 38. If the rule that there shall be no greater charge for the shorter than a longer haul over the same line in the same direction, the shorter haul being included in the longer, were observed by all the roads or lines from New York and other northeastern cities to Nashville, would it be necessary for any one of those roads or lines to depart from this rule in order to retain its share of the traffic and prevent diversion of its traffic to the other roads or lines?

A. It would; that is, it would be necessary to depart from that rule.

Q. 39. Is not Chattanooga on the Tennessee river?

A. Yes, sir.

Q. 40. Does not Chattanooga, by means of the Tennessee river have water connection with points on the Ohio and Mississippi rivers?

A. It never had any water connection that has been strong enough or has lasted long enough to force the rail rates down.

Q. 41. When you say "has not lasted long enough," do
254 you mean that the river is not navigable the entire year?

A. No, sir; there are so many obstacles to navigation above Riverton that the effort to keep on lines of boats below to Riverton has failed. There is a line of boats running from Chattanooga as far down as Decatur. But when you get down below Decatur to the Mussel Shoals canal, and below that canal, the obstacles in the river as far down as Florence and below Florence to Colbert shoals some thirty miles on down to Riverton, have so far prevented the successful operation of any line of boats from the mouth of the Tennessee river or any point below Riverton to Chattanooga.

Q. 42. There is transportation, you say, the year round from Decatur to Chattanooga?

A. Well, a good portion of the year—perhaps nine or ten months.

Q. 43. What railroads reach Decatur?

A. The Louisville & Nashville and the Memphis & Charleston roads.

Q. 44. Is there not transportation by the Tennessee river from Decatur to the mouth of the river?

A. Irregularly there is; there is no regular line.

Q. 45. Boats then go from Decatur to the mouth of the Tennessee?

A. At high tide, they can get through all right. At low water they cannot.

Q. 46. During how many months of the year is the water so low that the boats cannot navigate the river from Decatur to its mouth?

A. Between Decatur and Florence, occasionally a boat can go through safely, if I understand from talking with river men. Below Florence, possibly there is good water six months in the year.

Q. 47. You have no personal knowledge as to the navigation between Decatur and Florence?

A. No, only from talking with the river men, who are familiar with it. I have personal knowledge of the river below Florence. I have made frequent trips on that portion of the river but have never been between Decatur and Florence.

Redirect examination.

By Mr. BAXTER:

Q. 1. Would it be practicable for the lines operating from New York and Boston via Chattanooga to Nashville to maintain as high rates from New York, Boston and other northeastern cities to Nashville as are charged from New York and other northeastern cities to Chattanooga?

255 A. If they did, they would lose all the business.

Q. 2. You were asked on cross-examination, among others, the following question:

"If the rule, that there shall be no greater charge for a shorter than a longer haul over the same line in the same direction, the shorter haul being included in the longer, were observed by all the roads or lines from New York and other northeastern cities to Nashville, would it be necessary for any one of those roads, or lines, to depart from this rule, in order to retain its share of the traffic, and prevent diversion of its traffic to the other roads or lines"?

Suppose a railroad running from "A" to "B" is 100 miles long, and the competing line from "A" via "C" to "B" is 200 miles long. Suppose that the line A-B would not charge more for the short than the long haul, would it be possible for the A-C-B line to meet the rates by the line A-B, without departing from the rule of charging more for the short than the long haul, unless it should be prepared to accept a great loss upon its local traffic?

A. Ordinarily it would not be possible. But there are some circumstances and conditions attaching to some lines that might make it possible. For instance, the average rates of the lines north of the Ohio river, particularly the trunk lines, are much less per ton

per mile than on the roads in the southeast, on both their local and through traffic. This is due to the enormously greater volume of business and the very much larger population in that territory than in the southeastern territory. If the southeastern roads would undertake to make their rates the same per ton per mile as the roads north of the Ohio, including the trunk lines, none of the southern roads, with their limited volume of tonnage and population could make expenses.

It so happens that in the question of rates from New York and the northeastern coast cities to Nashville this very illustration applies. The established rates from New York and other northeastern cities to Ohio River points—Cincinnati, Louisville, Evansville and Cairo, are made on their established basis, while the rates from New York and other northeastern cities to Chattanooga are made on the established southern basis. Necessarily this northern basis of making rates and this southern basis of making rates, must at some point, or between some points, come together, and by reason of the actual or possible boat rates from the various Ohio River cities to Nashville via the Cumberland river, Nashville is practically controlled by the northern basis of rate-making,
256 and, as stated above, if the southern roads were forced to adjust all their rates to the northern scale, none of them could live.

This break between the southern system of rates and the northern system of rates must cause and inequality somewhere, and as explained above, by reason of the Cumberland river practically making Nashville a trunk-line point, the break comes between the northern and the southern systems between Chattanooga and Nashville. So that in this case, while the long line from New York to Nashville is via the northern routes, they do not only meet the rates of the southern lines without sacrificing their local revenue, but actually force the southern lines to establish a lower basis of rates to Nashville than to Chattanooga.

Q. 3. Recurring to the hypothesis contained in my last question, suppose the local traffic or the local tonnage per mile was the same on the short line A-B as on the long line A-C-B. Now if the long line A-C-B should observe the rule of not charging more for the short than the long haul, and at the same time should attempt to meet the rates of the line A-B, would not the loss of revenue that would have to be sustained by the long line A-C-B be very much greater than the loss of revenue sustained by the line A-B?

A. Yes, sir, very much; in fact, all conditions being equal, it would be twice as great.

Recross-examination.

By Mr. SHAVER:

Q. 1. In the case named to you, the line A-B is the short line, is it not?

A. Yes, sir.

Q. 2. And the line A-C-B, a long, roundabout line?

A. Yes, sir.

Q. 3. Is it not the rule that the short line fixes the rate between two given points?

A. I believe in the passenger business that is the rule; I have heard so stated. But there has never been any such recognized rule in making of freight rates.

Q. 4. Ought not the shortest and best line to fix the rate?

A. Ordinarily, it should do so.

Q. 5. Is it not an unnatural condition of things, when a long, roundabout line, twice as long as the short line, like the line A-C-B, transports traffic between A and B?

A. No, sir, that is frequently done. Much of the business
257 today from New York to Memphis is going via New Orleans, which is twice as long as or very much longer than the short route.

Q. 6. Is that not an unnatural condition of things?

A. It continues right along, and therefore it would seem that that would make it natural. We think it unnatural, because we have the short line, but the Memphis merchants think not, and they tell us that they make the trip from New York to Memphis in from nine to ten days; the shorter line makes it in from five to seven days.

Mr. SHAVER: That is all.

Boston, Mass.

	1	2	3	4	5	6	Dry goods, Boots & shoes.
In effect during 1892	91	78	60	42	36	31	85
In effect during 1896	91	78	60	42	36	31	85

Division basis.

When via routes 19, 20, 21, 22, 23, 24, 25, 26, 27, proportion of the Nash., Chatt. & St. L.	12.5	10.7	8.2	5.8	4.9	4.2	12.5
7, 8, 9, 10, 11, 12, 13, 14, proportion of Nash., Chatt. & St. L. deduct	39	34	27	23	18	15	39

And prorate remainder to Chatt. 80.7 p. c., N., C. & St. L., 19.3 p. c. Tot. p. c., 100.

1 prorate

Str. to Sav.		Chatta.		N., C. & St. L.	
M.	per ct.	M.	p. c.	M.	per ct.
300	34	432	49.9	151	17.1.

First deduct insurance	8, 6, 5, 4, 3, 2.
Wharfage	4, 4, 4, 4, 4, 4.

3 prorate

Str. to Nor.		Bristol.		Chat.		N., C. & St. L.	
M.	p. c.	M.	p. c.	M.	p. c.	M.	p. c.
300	27.2	408	37.1	242	22	151	13.7

First deduct insurance	8, 6, 5, 4, 3, 2.
Total per cent	100

2 prorate

St. to Char.		Aug'ta.		Atlan.		Chat.		N., C. & S. L.	
M.	per ct.	M.	p. c.	M.	p. c.	M.	p. c.	M.	p. c.
250	29.5	138	16.3	171	20.1	138	16.3	151	17.8

Total per cent	100
Arbitraries to N. Y.	16, 15, 14, 12, 12, 10
Wharfage & transfer	5, 5, 5, 5, 5, 5
First deduct insurance	11, 8, 6, 4, 3, 2

4 prorate

Str. to port.		Atlanta.		Chatta.		N., C. & St. L.	
M.	p. c.	M.	p. c.	M.	p. c.	M.	p. c.
300	22.5	595	45.4	138	14.7	151	17.1

Total p. c.	100
Term. & trans.	3, 3, 3, 3, 3, 3
1st ded. ins.	8, 6, 5, 4, 3, 2

5 prorate

Str. to Nor.		Chatta.		N., C. & St. L.	
M.	p. c.	M.	p. c.	M.	per cent.
300	27.2	650	59.1	151	13.7

Total per cent	100
First deduct insurance	8, 6, 5, 4, 3, 2

New York, N. Y.

	1	2	3	4	5	6	Dry goods, Boots & shoes.
	91	78	60	42	36	31	85
	91	78	60	42	36	31	85

When via routes, 34, 35, 36, proportion Nash., Ch. & St. L.	14.3	12.2	9.4	6.6	5.7	4.9	14.3
37, 38, 39, 40, proportion of Nash., C. & St. L., deduct	33	28	25	17	14	12	33

And prorate remainder to Chatt., 80.7 per cent. N., C. & St. L., 19.3 per cent. Total p. c., 100.

28 prorate

Str. to Sav.		Chatt.		N., C. & St. L.	
M.	per ct.	M.	per ct.	M.	per cent.
250	30	452	51.9	151	18.1

First deduct insurance	8, 6, 5, 4, 3, 2
Wharfage	4, 4, 4, 4, 4, 4

29 prorate

St. to Char.		Augusta.		Atlanta.		Chat.		N., C. & St. L.	
M.	p. c.	M.	p. c.	M.	p. c.	M.	p. c.	M.	p. c.
250	29.5	138	16.3	171	20.1	138	16.2	151	17.8

Total	100
Insurance	11, 8, 6, 4, 3, 2
First deduct wharfage	5, 5, 5, 5, 5, 5

30-32 prorate

Str. to Nor.		Chatta.		N., C. & St. L.	
M.	per ct.	M.	per ct.	M.	per cent.
109	16.6	650	67.7	151	15.7

Total per cent	100
Insurance	8, 6, 5, 4, 3, 2
Terminal & light	5, 5, 5, 5, 5, 5

31-33 prorate

St. to Port.		Atlanta.		Chatta.		N., C. & St. L.	
M.	p. c.	M.	p. c.	M.	p. c.	M.	p. c.
160	16.6	595	53	138	12.3	151	18.1

Total p. c.	100
Insurance	8, 6, 5, 4, 3, 2
1st ded., N. Y. Ter. & L.	5, 5, 5, 5, 5, 5

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259 NASHVILLE, TENN., *July* 22, 1897.

GEORGE P. BILES, a witness on behalf of the defendant, having been duly sworn, testified as follows:

By Mr. BAXTER:

Q. 1. State your name, age, residence and occupation.

A. George P. Biles; age, 40; occupation, general freight agent of the Cincinnati, New Orleans & Texas Pacific Railway Company; residence, Newport, Kentucky.

Q. 2. How long have you been connected with the railroad transportation business in the United States and in what capacities?

A. Since 1884 in various capacities, such as rate clerk, afterwards assistant general freight agent, and since October, 1895, general freight agent.

Q. 3. The rates from New York via Bristol to Chattanooga were in 1892, as shown by the report and opinion of the commission as follows:

Classes	1	2	3	4	5	6
Cents	114	98	86	73	60	49

The distance from New York via Bristol to Chattanooga is 901 miles. Please state whether, in your opinion, said rates are just or unjust, reasonable or unreasonable, and give your reasons, for any opinion you may express upon the subject.

A. I consider the rates from New York to Chattanooga just and reasonable within themselves. This opinion is given based upon the fact that the rates from New York to Chattanooga are adjusted in line with the rates from New York and other competitive points in that section of the country.

Q. 4. Do you know or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. I do not think there is anything further I can say in regard to this.

Cross-examination.

By Mr. SHAVER:

Q. 1. You have stated that the rates from Chattanooga to New York and Boston and other eastern cities are just and reasonable in and of themselves. The rates for the haul from New York
260 and other eastern cities through Chattanooga and 151 miles further on to Nashville, are as follows:

Classes	1	2	3	4	5	6
Cents	91	78	60	42	36	31

Is it your opinion that those rates to Nashville for the haul through Chattanooga and 151 miles further on, are also just and reasonable in and of themselves?

A. I think they are. The rates from the East to Nashville are unreasonably low.

Q. 2. Do those rates yield to the carrier revenue in excess of the cost of transportation?

A. I think the lines from the East through Chattanooga to Nashville can afford to participate in the movement of traffic from and to those points at those rates.

Q. 3. Do they yield the carrier anything in excess of the cost of transportation?

A. That depends entirely upon the circumstances. I do not know what would be the cost of the service for handling business from the East to Nashville. That is a very difficult thing to get at. But those lines certainly get revenue out of the Nashville business which, in my opinion, exceed the cost of the service performed.

Q. 4. Is a rate in your opinion reasonable in and of itself which does not yield a carrier a proper remuneration over and above the cost of the service of the carriage?

A. I should say not.

Q. 5. Can it be ascertained whether a rate is reasonably remunerative to the carrier without first considering the cost of the expense of the service of carriage?

A. That is a very hard matter to determine. It is a very difficult matter to decide or to fix your rate as compared with the cost of service of operation. There are so many conditions surrounding this rate situation in regard to that, that is a very difficult thing to form.

Q. 6. Can it be ascertained whether a rate yields to the carrier an income over and above the cost of the service of carriage without first ascertaining the cost of that service?

A. I think myself that that depends somewhat upon experience. If a new railroad is opened up, it has to fix its rates, we will say to local points, to enable that carrier to meet the cost of the operation. Now, the cost of operation has not been fixed, so therefore, the rates will have to be fixed by the management as they feel will bring about the desired result—I mean from a revenue standpoint,
261 and which would meet all the expenses. On the other hand, again, those rates may not be high enough to meet these expenses.

Q. 7. Does not the cost of the expense of the service of transportation depend largely, or to some extent on the length of the haul, other things being equal?

A. If you mean by that question, if freight can be handled for a longer distance for a less rate per ton per mile——

Q. 8. I did not refer to the rate per ton per mile.

A. You referred to the distance, I understand.

Q. 9. I will read the question again. (Counsel here repeated the question.)

A. I would like for you to explain that to me—what you mean by that.

Q. 10. Well, all other things being equal, and the rate of speed being the same, the length of the train being the same, the quantity

of the cars being the same, &c., would it not cost more to transport the train 20 miles than 10?

A. It would probably cost more in the aggregate.

Q. 11. That is what I mean, in the aggregate, I do not refer to the cost per mile.

A. It will cost more to run a train of twenty cars three hundred miles than a train of twenty cars fifty miles.

Q. 12. Other things being equal, is not the consumption of time greater, the greater the length of the haul?

A. Of course, it takes longer for a train to go a hundred miles at the rate of fifty miles per hour, than it does to go fifty miles, sir.

Q. 13. Other things being equal, is not the consumption of fuel greater, the greater the length of the haul?

A. Yes, sir.

Q. 14. Other things being equal, is not the wear and tear on locomotives, cars, tracks, etc., greater, the greater the length of the haul?

A. Yes, sir.

Q. 15. Other things being equal is not the cost of keeping the road in repair or in good condition greater, the greater the length of the road?

A. Yes, sir.

Q. 16. Does it not require more locomotives and cars and crews for running trains on a long road than on a shorter road?

A. Do you mean the aggregate or do you mean as compared with the distance? If you mean in the aggregate, I suppose it will cost more for the longer road than a shorter road.

Q. 17. I asked, does it not require more locomotives and cars and crews for running trains on a long road, than on a short one?

262 A. Yes, sir.

Q. 18. Other things being equal, does not distance add to the cost of building a road, and are not, therefore, the fixed charges, such as interest on capital invested, greater, the greater the length of the road?

A. Yes, sir.

Q. 19. Is not the expense to the carrier on strictly local hauls greater per ton per mile than on long through hauls?

A. Yes, sir, I should say so.

Q. 20. How long have you been engaged in the railroad business in the territory east of the Mississippi and south of the Virginias and Ohio river?

A. Since 1884.

Q. 20½. Has the greater charge for the shorter than the longer haul over the same line in the same direction, the shorter haul being included in the longer, ever, to your personal knowledge been made in that territory except in cases of competition in transportation to the longer-distance point?

A. I do not know that I do.

Q. 21. Is the traffic transported from New York and other northeastern cities via Cincinnati and thence over the Cincinnati and New Orleans and Texas Pacific Railroad Company to Chattanooga?

A. Yes, sir.

Q. 22. Are the rates on traffic transported by that line to Chattanooga the same as by the lines through Bristol, etc.?

A. The rates are supposed to be the same by both routes.

Q. 23. Does the line via Cincinnati and thence over the Cincinnati, New Orleans and Texas Pacific railway to Chattanooga compare with the other lines to Bristol, &c.?

A. To Chattanooga?

Q. 24. Yes, sir.

A. Yes, sir.

Q. 25. Is not the bulk of the traffic from New York and other eastern cities to Nashville hauled by the route through Chattanooga?

A. I cannot say as to that.

Q. 26. What roads actually reach Nashville?

A. The Nashville, Chattanooga & St. Louis railway and the Louisville & Nashville railroad.

Q. 27. Is not the Nashville, Chattanooga & St. Louis railway owned or controlled by the Louisville & Nashville Railroad Company?

A. I cannot say. I do not know.

Q. 28. Is it not your understanding that they are practically one system?

263 A. So far as I know they are separate organizations—at least they are operated independently—separate management for each road. How far the Louisville & Nashville railroad is interested to any extent in the Nashville, Chattanooga & St. Louis railway properties, I do not know.

Q. 29. Is it not your understanding that the Louisville & Nashville railroad system owns a controlling interest in the Nashville, Chattanooga & St. Louis railway?

A. It has been claimed that such is the case, but I do not really know. I am not in a position to say.

Q. 30. Name the railroads that actually reach Chattanooga.

A. There is:

The Cincinnati, New Orleans & Texas Pacific railway.
The Southern railway.
The Western & Atlantic railroad.
The Chattanooga, Rome & Columbus railroad.
The Chattanooga Southern railroad.
The Alabama Great Southern railroad.
The Nashville, Chattanooga & St. Louis railway.
The Memphis & Charleston railroad.

I, Frank Lyon, who was agreed upon by counsel for both parties, to act as special examiner, as set forth in their foregoing stipulation, do hereby certify that I faithfully and truly and correctly took the testimony of the above-named witnesses in shorthand, and afterwards reduced it to typewriting, and that the foregoing pages con-

tain a full, true and correct report of the testimony given by each of said witnesses.

This 4th day of August, 1897.

FRANK LYON,
Acting Special Examiner,
1317 *F St. N. W., Washington, D. C.*

EXHIBIT No. 3. Filed by J. M. Culp.

The Southeastern Freight Association.

Articles of Association of the Southeastern Freight Association.

Preamble.

For the purpose of interchanging authentic information in
264 regard to the tariffs of the respective parties, members of this association; for consultation and mutual advice in regard to the reasonableness of tariffs, and the publicity of the same; and to aid in fulfilling the purposes of the laws of the States, and of the United States, affecting commerce; especially with a view of preventing illegal and unjust discriminations between persons and localities, or kinds of traffic.

The Atlanta & West Point railroad and Western Railway of Alabama, the Central of Georgia railway, the Georgia Southern & Florida railway, the Southern railway, the Merchants' & Miners' Transportation Company, the Ocean Steamship Company, the Atlantic Coast line, the Old Dominion Steamship Company, the Atlanta, Knoxville & Northern railway, the Florida Central & Peninsular railroad, the Baltimore, Chesapeake & Richmond Steamboat Company, the Plant system, the Georgia railroad, the East & West railroad, the Norfolk & Western railway, and such other lines as may become parties hereto, hereby agree to form an association to be called the Southeastern Freight Association.

Article I.

SECTION 1. The territory of this association shall be the territory lying south of the Potomac river to the Virginia-West Virginia State line, thence via said line to Bristol, Tenn., through and including Middlesborough, Ky., Jellico and Harriman Junction, Tenn., to and including Chattanooga, Tenn., and on and south and east of a line from Chattanooga, Tenn., via the Alabama Great Southern railroad to Birmingham, Ala., thence via Southern railway to and including Selma, Ala., thence via the Western Railway of Alabama to and including Montgomery, Ala., thence via Plant system via Valdosta, Ga., Jasper, Live Oak and Lake City, Fla., to Jacksonville, Fla., including points on the line from Montgomery to Jacksonville; thence via the South Atlantic seaboard to the Potomac river.

SECTION 2. The traffic subject to this association shall be all business for which two or more parties hereto compete, having origin or destination within this territory.

SECTION 3. It is understood that the following traffic is not covered by this association: (1) Traffic between any two points north of the Virginia-North Carolina State line; (2) traffic between points on the designated northern and western boundary lines and points outside of the defined association territory; (3) local traffic from or through North Atlantic ports to South Atlantic ports, or
265 from South Atlantic ports to or through North Atlantic ports; and (4) coke and bituminous coal.

Article II.

SECTION 1. The association shall be managed by an executive board, which shall have no power to bind the members of the association to observe any regulations in restraint of trade.

Article III.

SECTION 1. The presidents, vice-presidents or general managers of the companies members of the association shall constitute the executive board, but may designate another officer, fully empowered to represent them thereon.

SECTION 2. The executive board shall elect its chairman and the chairman of this association, and shall fix his term of service, and shall fix the salaries of the chairman and officers. All other expenses of the association shall be subject to its review and approval.

SECTION 3. The executive board or the conference committee shall meet upon the written request of three or more members thereof, or upon call of the chairman.

SECTION 4. Two-thirds of the members of the executive board shall constitute a quorum.

SECTION 5. It shall require the unanimous action of those present to adopt any proposition coming before the executive board.

Article IV.

SECTION 1. A conference committee shall be constituted, consisting of a duly accredited traffic officer of each company. Each company party hereto reserving always to itself the right to take independent action on any subject, agrees that any change in rates, rules or regulations affecting the traffic within the territory of this association, proposed to be made by any company, shall be submitted to said conference committee by the company proposing to make such change for consideration and exchange of views, at least three days before the same shall take effect.

Article V.

SECTION 1. It shall be the duty of the chairman to discourage a reduction in rates by rebate or drawback or by payment of commissions or by underbilling weights, or by an illegal device whatsoever,
266 and upon complaint that such practices are being resorted to, shall make an investigation thereof, reporting the result to the executive board. The chairman and his representa-

tives shall be given access to all records of the companies that pertain to the traffic subject to this association.

Article VI.

SECTION 1. The association expenses shall be apportioned fairly between the companies by the executive board, and upon such basis, the chairman shall have authority to make draft upon such companies monthly, in advance, to meet the expenses of the association.

Article VII.

SECTION 1. Any party retiring from this association before the expiration of the time herein fixed, except by unanimous consent, shall not be released from its obligations to contribute its *pro rata* share towards the expense of maintaining the association during the time agreed upon.

Article VIII.

SECTION 1. It shall be the duty of the chairman to preside at all meetings of the conference committee, keep the records of the association, including the records of the executive board, to receive from the members of the association copies of any joint tariff or rate established by said members covering traffic within the territory of the association, either wholly or in part, and to compile, print and distribute such tariffs in conformity with the interstate-commerce act and other laws; and to receive, formulate and distribute statistical information as to the freight traffic of all lines. To this end, members will furnish such reports of freight traffic within the territory of the association as may be required by the chairman.

SECTION 2. The rules governing the filing of freight tariffs with the Interstate Commerce Commission shall apply as to filing all tariffs with the chairman, and the parties hereto shall file with the chairman all tariffs they may issue.

Article IX.

SECTION 1. Nothing herein shall be so construed as to establish or otherwise affect rates on freight traffic, and it shall be the duty of the executive board to so exercise the power conferred upon it as to discourage, and, so far as possible, prevent, a violation of the interstate-commerce act, and of any other Federal or State law, applicable to commerce, or to the provisions of the charters of
267 any of the parties hereto. The executive board shall report to the Federal and State commissions any reduction in rates by any illegal device whatsoever, in order to prevent unjust discriminations between persons and localities or kinds of traffic.

Article X.

SECTION 1. No change shall be made in these articles of association, except by consent of each member of the executive board.

Article XI.

SECTION 1. These articles of association shall become effective May 1st, 1897, and continue in force until May 1st, 1898.

THE CENTRAL OF GEORGIA RAILWAY,
By JOHN M. EGAN, *Vice-President.*
THE OCEAN STEAMSHIP CO.,
By JOHN M. EGAN, *Vice-President.*
MERCHANTS' AND MINERS' TRANS. CO.,
By J. C. WHITNEY, *Traff. Mgr.*
ATLANTA, KNOXVILLE & NORTHERN R'Y CO.,
By E. C. SPALDING, *Vice-President.*
SOUTHERN R'W'Y CO.,
By W. W. FINLEY, *2d V. P.*
GEORGIA SOUTHERN & FLORIDA RAILWAY CO.,
By WILLIAM CHECKLEY SHAW, *Vice-President.*
EAST & WEST RAILROAD CO.,
By CHARLES P. BALL, *Gen'l Manager.*
THE BALTIMORE, CHESAPEAKE AND RICHMOND ST. B'T CO.,
By REUBEN FOSTER, *President.*
PLANT SYSTEM,
By D. F. JACK, *3d V. P.*
THE GEORGIA RAILROAD CO.,
By THOMAS K. SCOTT, *Gen. Mgr.*
THE ATLANTIC COAST LINE,
By H. WALTERS, *President.*
THE ATLANTA & WEST POINT RAILROAD CO. AND
THE WESTERN RAILWAY OF ALABAMA,
By GEORGE C. SMITH, *Pres't and Gen'l Mgr.*

EXHIBIT No. 1. Filed by Vanden Burg. Sup. 10.

Statement Showing Classes of Freight (Official Classification) and Commodities Separate Shipped from Boston and New York via Cincinnati, O., to Nashville, Tenn., During the Months of May and November, 1892; also Showing Number of Tons Carried 1 Mile for Each Class and Commodity.

Classification.	May, 1892.						November, 1892.					
	From New York, N. Y.		From Boston, Mass.		Total.		From New York, N. Y.		From Boston, Mass.		Total.	
	Weight in pounds.	Tons carried 1 mile.	Weight in pounds.	Tons carried 1 mile.	Weight in pounds.	Tons carried 1 mile.	Weight in pounds.	Tons carried 1 mile.	Weight in pounds.	Tons carried 1 mile.	Weight in pounds.	Tons carried 1 mile.
Class 1	14,713	2,155	.....	.....	14,713	2,155	22,767	3,335	.....	.....	22,767	3,335
" 2	2,048	300	.....	.....	2,048	300	4,190	614	180	026	4,370	640
" 3	4,555	667	100	014	4,655	681	9,995	1,464	2,000	293	11,995	1,757
" 4	.....	.....	6,750	989	6,750	989	13,774	2,018	350	051	14,124	2,069
Coffee	149,305	21,873	.....	.....	149,305	21,873	50,150	7,347	.....	.....	50,150	7,347
Apples	.....	.....	.....	.....	.....	.....	28,500	4,175	.....	.....	28,500	4,175
Bunch	.....	.....	24,000	3,516	24,000	3,516	.....	.....	.....	.....	.....	.....
Total	170,621	24,995	30,850	4,519	201,471	29,514	129,376	18,953	2,530	370	131,906	19,323

To Mr. Y. Vandenburg, traffic manager, Cincinnati to Nashville, 293 miles:
I hereby certify above statement to be correct.
Louisville, Ky., June 14th, 1897.

W. M. DICKINSON, *Auditor of Receipts.*

EXHIBIT No. 2. Filed by Vanden Burg. Sup. 12.
Louisville & Nashville Railroad Company, office of the general freight agent.
Rates of Transportation Taking Effect ——.

Form 1046.

From New York, N. Y., to—	Cotton piece goods.	Canned goods N. O. S.	Soda C. L. in and any quantity out.	Apples C. L. in and L. C. L. out.	Groceries and sadddlery N. O. S.	Coffee, green, in double s'ks L. C. L.	Leather in bdls. or rolls.	Lemons. C. L. in and L. C. L. out.	
Stevenson, Ala., on Nashv. combination	1 00	1 13	72	50	1 36	67	1 18	1 05	
" " " Chatta. "	82	76	68	45	1 23	67	1 08	63	
Bridgeport, Ala., on Nashv. comb'n	1 00	1 13	72	50	1 36	67	1 18	1 05	
" " " Chatta. "	77	72	64	42	1 19	63	1 03	59	
Decherd, Tenn., on Nashv. comb'n	94	1 00	**70**	50	**1 38**	**67**	**1 12**	97	N. & C. stations.
" " " Chatta. "	91	84	75	47	1 32	73	1 17	72	
Tullahoma, Tenn., on Nashv. comb'n	**90**	1 06	**68**	50	**1 24**	**66**	**1 08**	93	
" " " Chatta. "	95	88	78	47	1 36	76	1 21	76	
Scottsboro, Ala., on Nashv. comb'n	90	1 13	72	61	1 36	67	1 18	1 05	
" " " Chatta. "	81	82	70	51	1 34	67	1 17	74	
Woodville, Ala., on Nashv. comb'n	90	1 13	72	61	1 36	**67**	**1 18**	1 05	M. & C. sta's.
" " " Chatta. "	83	84	72	52	1 36	68	1 19	76	
Cleveland, Tenn., on Nashv. comb'n	98	1 21	80	65	1 50	71	1 32	1 19	
" " " Chatta. "	76	74	65	45	1 22	61	1 08	62	Sou. R'y sta's.
Athens, Tenn., on Nashv. comb'n	1 04	1 27	86	69	1 58	75	1 38	1 27	East of Chatta.
" " " Chatta. "	82	80	71	49	1 30	65	1 14	70	
Valley Head, Ala., on Nashv. comb'n	88	1 10	70	57½	1 28½	63½	1 18	1 07½	
" " " Chatta. "	78	76	67	47½	1 28	63½	1 11	68	
Fort Payne, Ala., on Nash. comb'n	91	1 13½	73	60	1 44	**66**	1 22	1 13	A. G. S. sta's.
" " " Chatta. "	84	82	73	52½	1 38	68½	1 19	78	
Jamestown, Ala., on Nashv. comb'n	1 01	1 17	83	67	1 59	73	1 37	1 28	
" " " Chatta. "	88	87	77	50	1 33	66	1 17	73	
Harrisburg, Ala., on Nashv. comb'n	1 02	1 18	84	69	1 58	75	1 40	1 27	Chatta. Sou. sta's
" " " Chatta. "	86	80	75	49	1 30	65	1 16	70	
La Fayette, Ga., on Nashv. comb'n	98	1 13	80	67	1 51	73	1 33	1 20	
" " " Chatta. "	76	76	65	47	1 23	63	1 09	63	
Summerville, Ga., on Nashv. comb'n	1 03	1 19	85	69	1 59	75	1 40	1 28	C. R. & C. sta's.
" " " Chatta. "	81	82	70	49	1 31	65	1 16	71	
Cohutta, Ga., on Nashv. comb'n	98	1 13	80	65	1 51	73	1 33	1 15	
" " " Chatta. "	76	76	65	45	1 23	63	1 02	58	Sou. R'y sta's.
Waring, Ga., on Nashv. comb'n	1 01	1 17	83	66	1 55	74	1 36	1 19	South Chatta.
" " " Chatta. "	79	80	68	46	1 27	64	1 12	62	
Resaca, Ga., on Nashv. comb'n	1 01	1 16	83	67	1 55	73	1 36	1 18	
" " " Chatta. "	86	79	68	47	1 27	65	1 12	61	
Adairsville, Ga., on Nashv. comb'n	1 08	1 19	90	68	1 59	74	1 39	1 21	W. & A. sta's.
" " " Chatta. "	89	82	69	48	1 31	64	1 15	64	
Dayton, Tenn., on Nashv. comb'n	93	1 08	75	63	1 48	69	1 29	1 17	
" " " Chatta. "	71	71	60	43	1 20	59	1 05	60	
Spring City, Tenn., on Nashv. comb'n	95	1 08	77	63	1 50	69	1 31	1 19	C., N. O. & T. P.
" " " Chatta. "	73	71	62	43	1 22	59	1 07	62	

Lowest combination under on Nashville only when rates are in bolder type.

THE INTERSTATE COMMERCE COMMISSION. 223
2020

270 And on the same day, to wit, the 26th day of August, A. D. 1897, a certain stipulation was filed in the clerk's office of said court, which said stipulation is clothed in the words and figures following, to wit:

Stipulation.

(Endorsed:) Filed Aug. 26th, 1897. Henry O. Ewing, Clerk.

In the Circuit Court of the United States for the Eastern District of Tennessee.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE EAST TENNESSEE, VIRGINIA & GEORGIA RAILWAY Company *et al.*
} In Equity. No. 384.

Stipulation.

In the above-entitled cause it is stipulated and agreed, by counsel for the complainant and by counsel for the defendants, that the depositions of the following-named witness for the complainant, to wit, Jesse M. Smith, of Washington, D. C., may be taken on the foregoing and annexed direct and cross interrogatories, and may be read in evidence on the hearing of said cause subject to all exceptions as to relevancy and competency. All formal objections are waived. It is further stipulated and agreed that Eugene L. Gaddess, of Washington, D. C., may act as commissioner in taking said deposition. The issuance of commission to him and formal caption and certificate by him are waived.

L. A. SHAVER,
Counsel for the Interstate Commerce Commission.
ED. BAXTER,
Counsel for the Defendants.

And afterwards, to wit, on the 27th day of August, A. D. 1897, the deposition of Jesse M. Smith was filed in the clerk's office of said court, which said deposition is clothed in the words and figures following, to wit:

Deposition of Jesse M. Smith.

(Endorsed:) Filed Aug. 27, 1897. Crawford T. Johnson, Deputy Clerk.

271 In the Circuit Court of the United States for the Eastern District of Tennessee.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE EAST TENNESSEE, VIRGINIA & Georgia Railway Company *et al.* } In Equity. No. 384.

Interrogatories in the above-entitled cause on behalf of the complainant therein, to be exhibited to Jesse M. Smith, of Washington, D. C.

Interrogatory No. 1. What is your name, residence, and occupation?

Interrogatory No. 2. If you say you are auditor of the Interstate Commerce Commission, state how long you have occupied that position and what, if any, was your previous position with the commission and how long you occupied that?

Interrogatory No. 3. In what business were you engaged before entering into the service of the commission? How long were you so engaged and in what part of the country?

Interrogatory No. 4. Are schedules of rates, fares, and charges applying on interstate traffic required to be filed by carriers with the Interstate Commerce Commission? Are they not filed in the office of the auditor of the commission, and is it not one of your duties as auditor to examine such tariffs?

Interrogatory No. 5. From your examination of such schedules of rates, fares, and charges, in what section of the United States does the practice of making the greater charge for the shorter than the longer haul over the same line in the same direction, the shorter haul being included in the longer, prevail to the greatest extent?

Interrogatory No. 6. If you say that this practice prevails to the greatest extent in the territory east of the Mississippi river and south of the Ohio and Potomac rivers, state whether or not it is the rule in that territory in cases of transportation from points outside that territory, through shorter-distance local points to longer-distance competitive points in that territory.

Interrogatory No. 7. How long has this practice existed in that territory? Was it or not in existence in the year 1887, when the act to regulate commerce became a law and prior thereto?

272 Interrogatory No. 8. Does this practice exist to any considerable extent in eastern or trunk-line territory?

Interrogatory No. 9. Has the greater charge for the shorter than the long- over the same line in the same direction, the shorter haul being included in the longer, ever to your personal knowledge been made in the territory east of the Mississippi river and south of the

Ohio and Potomac rivers, except in cases of competition in transportation to the longer-distance point? In other words, so far as your personal knowledge extends, has not competition in transportation been the sole ground or excuse for such greater charge?

Interrogatory No. 10. Give a tabular statement showing the rates on the six classes of traffic that were in force in 1892 and that are now in force from New York and Boston to Chattanooga and Nashville, respectively, and showing the excess of the Chattanooga rate on each class over the Nashville rate.

Interrogatory No. 11. State under what classifications these rates are made and name a few principal articles covered by each class.

Interrogatory No. 12. What are the minimum car-load weights specified in these classifications, and what is the excess of the Chattanooga rate over the Nashville rate on each class of traffic per such minimum car-loads?

Interrogatory No. 13. Are the same articles classified differently in the two classifications to any considerable extent, and if so, can you state which, as a whole is the lower—that is, which contains the greater number of articles classed lower than the other?

Interrogatory No. 14. Mention, if you can, a few articles which are placed in a lower class in the official than in the southern classification, and state the class rates on such articles from New York to Chattanooga and Nashville, according to the classification governing the rates to each point; also the difference, if any, in favor of Nashville.

Interrogatory No. 15. Mention, if you can, a few articles which are classed lower in the southern than in the official classification, and state the class rates on such articles from New York to Chattanooga and Nashville according to the classification governing the rates to each point; also state the difference in rate, if any, in favor of Nashville.

Interrogatory No. 16. Are there any important articles that are given special commodity rates from New York to Nashville and not to Chattanooga? If so, name such articles and the rates applying thereon to both points.

273 Interrogatory No. 17. What is the distance by the short rail line from Chattanooga to Memphis and from Nashville to Memphis; also from Chattanooga to Charleston and Savannah? Name the short rail lines from New York and Boston to Chattanooga and Nashville respectively, and state the distances by those lines to Chattanooga and Nashville respectively?

Interrogatory No. 18. Name the roads that actually reach Nashville; also the roads that actually reach Chattanooga.

Interrogatory No. 19. Cannot as many practicable lines of transportation be formed from Boston and New York to Chattanooga as to Nashville? Cannot a larger number of practicable lines of transportation be formed from Boston and New York to Chattanooga than to Nashville?

Interrogatory No. 20. Was not Chattanooga in 1892, and has it not been both before and since that time, recognized as what is known as a competitive point? Was not it so recognized and

treated by the Southern Railway & Steamship Association during its existence?

Interrogatory No. 21. What are the distances via the Nashville, Chattanooga & St. Louis railway from Chattanooga to Stevenson, Bridgeport, Decherd and Tullahoma? What are the distances by the same road from Nashville to these points?

Interrogatory No. 22. What are the distances via the Memphis & Charleston railroad from Chattanooga to Scottsboro and Woodville, Ala.? What are the distances by the shortest line from Nashville to these points?

Interrogatory No. 23. What are the distances from Chattanooga by the shortest line to Cleveland and Athens, Tenn., stations on the Southern railway? What are the distances by the shortest line from Nashville to the same points?

Interrogatory No. 24. What are the distances by the shortest line from Chattanooga to Valley Head and Fort Payne, stations on the Alabama Great Southern road? What are the distances by the shortest line from Nashville to the same points?

Interrogatory No. 25. What are the distances by the short line from Chattanooga to Jamestown and Harrisburg, Ala., stations on the Chattanooga Southern road? What are the distances by the short line from Nashville to the same points?

Interrogatory No. 26. What are the distances by the short line from Chattanooga to Lafayette and Summerville, Ga., stations
274 on the Chattanooga, Rome & Columbus road? What are the distances by the short line from Nashville to the same points?

Interrogatory No. 27. What are the distances by the short line from Chattanooga to Cohutta and Waring, Ga., Southern railway stations south of Chattanooga? What are the distances by the short line from Nashville to the same points?

Interrogatory No. 28. What are the distances by the short line from Chattanooga to Resaca and Adairsville, Ga., stations on the Western & Atlantic road? What are the distances by the short line from Nashville to the same points?

Interrogatory No. 29. What are the distances by the short line from Chattanooga to Dayton and Spring City, Tenn., stations on the Cincinnati, New Orleans & Texas Pacific railway? What are the distances by the short line from Nashville to the same points?

Interrogatory No. 30. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

L. A. SHAVER,
Of Counsel for Complainant.

Cross-examination waived.

ED. BAXTER,
Counsel for Defendants.

In the Circuit Court of the United States for the Eastern District of Tennessee.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE EAST TENNESSEE, VIRGINIA & GEORGIA Railway Company *et al.* } In Equity. No. 384.

Stipulation.

In the above-entitled cause, it is stipulated and agreed, by counsel for the complainant and by counsel for the defendants, that the deposition of the following-named witness for the complain-
275 ant, to wit: Jesse M. Smith, of Washington, D. C., may be taken on the foregoing and annexed direct and cross interrogatories, and may be read in evidence on the hearing of said cause subject to all exceptions as to relevancy and competency. All formal objections waived. It is further stipulated and agreed that Eugene L. Gaddess, of Washington, D. C., may act as commissioner in taking said deposition. The issuance of commission to him and formal caption and certificate by him are waived.

L. A. SHAVER,
Counsel for the Interstate Commerce Commission.
ED. BAXTER,
Counsel for the Defendants.

In the Circuit Court of the United States for the Eastern District of Tennessee.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE EAST TENNESSEE, VIRGINIA & GEORGIA Railway Company *et al.* } In Equity. No. 384.

Deposition of Jesse M. Smith, a Witness for the Complainant.

The said witness, JESSE M. SMITH, having been by me first duly sworn to speak the truth, the whole truth and nothing but the truth, doth depose as follows:

To the 1st interrogatory he saith: My name is Jesse M. Smith, Washington, D. C., and I am auditor of the Interstate Commerce Commission.

To the 2nd interrogatory he saith: I have occupied that position since July 1, 1895; from January 1, 1888, to July 1, 1895, I was assistant auditor of the commission.

To the 3d interrogatory he saith: I was engaged in railroad work for about fourteen years prior to entering the service of the commission, most of the time in the general freight department of the Louisville & Nashville railroad, at Louisville, Ky., and Montgomery, Ala.

To the 4th interrogatory, he saith: Common carriers are required

to file with the commission all schedules of rates, fares and charges applying on interstate traffic. All of such schedules are
276 placed on file in the office of the auditor of the commission, and it is one of the duties of the auditor, with the assistance of the clerical force in his charge, to examine, as far as practicable all schedules of rates, fares and charges filed in compliance with section six of the act to regulate commerce, for the purpose of determining whether such schedules are in accordance with the requirements of the law and the orders of the commission.

To the 5th interrogatory he saith: From the large number of tariffs examined since the beginning of my service with the commission, applying in all sections of the country, I am of the opinion that the practice of making the greater charge for the shorter than for the longer haul, over the same line in the same direction, the shorter being included in the longer, prevails to the greatest extent in the territory east of the Mississippi river and south of the Ohio and Potomac rivers.

To the 6th interrogatory, he saith: I am of the opinion that the practice referred to prevails as a rule in cases of transportation from points outside that territory through shorter-distance local points to longer-distance competitive points in that territory, though there are no doubt some exceptions.

To the 7th interrogatory he saith: To the best of my recollection this practice has existed in that territory to a greater or less extent since the beginning of my railroad service. It was in existence in the year 1887, and as above indicated, prior thereto.

To the 8th interrogatory, he saith: This practice does not prevail to any considerable extent in the territory east of the Mississippi river and north of the Ohio and Potomac rivers.

To the 9th interrogatory, he saith: I have no personal knowledge of any case where the greater charge for the shorter than for the longer haul, over the same line in the same direction, the shorter being included in the longer, has been made in the territory described, except in cases where competition in transportation existed at the longer-distance point. I believe the lower charge to the longer-distance point has, in practically all cases, been made on the ground of competition in transportation to such longer-distance point, either direct competition in transportation from and to the same points, or competition with carriers operating from other markets to same point of destination.

To the 10th interrogatory he saith: The rates on the six classes of freight from New York and Boston to both Chattanooga
277 and Nashville that were in force in 1892, are the same as those in effect at the present time, and are as follows, in cents per hundred pounds:

To Chattanooga, Tennessee:

	1	2	3	4	5	6
1892–1897	114	98	86	73	60	49

To Nashville, Tennessee:

	91	78	60	42	36	31

The rates to Chattanooga are in excess of the rates to Nashville on each class as follows:

1	2	3	4	5	6
23	20	26	31	24	18

To the 11th interrogatory, he saith: The rates to Chattanooga are governed by the southern freight classification. The rates to Nashville are governed by the official classification. A few of the principal articles in each class of these classifications are as follows:

Southern Freight Classification.

1st class:

Dry goods, N. O. S.; boots and shoes, tobacco, drugs and medicines, N. O. S.; rubber goods, N. O. S.; musical instruments, N. O. S.

2nd class:

Saddlery, N. O. S.; glassware, common, N. O. S.; hardware, N. O. S., boxed; matting, N. O. S.; mills, N. O. S.; tinware, N. O. S.

3rd class:

Cordage and twine, machinery and machines, N. O. S., L. C. L.; stoves, N. O. S.; stove furniture and hollow-ware, L. C. L.; Bicycles, K. D., C. L.; wire, N. O. S.; leather in rolls or boxes, L. C. L.

4th class:

Rope, N. O. S., L. C. L.
Canned goods, N. O. S., L. C. L.
Coffee, green, single sacks.
Dye, liquid, N. O. S., in barrels.
Handles, N. O. S., boxed or crated, L. C. L.
Cotton-seed oil mills.

278 5th class:

Cotton piece goods.
Rope, wire, L. C. L.; Canned goods, N. O. S., C. L.; stoves, N. O. S.; stove plates, stove furniture and hollow-ware, C. L.; tin plate, in boxes, L. C. L.; roofing felt, in bundles or rolls; Babbitt metal, in boxes, barrels or casks.

6th class:

Rope, N. O. S., C. L.; cement, N. O. S., in barrels or sacks, L. C. L.; Coffee, green, in double sacks; handles, N. O. S.; molasses and sugar, in bbls. or hhds.; paper for the manufacture of bags, in rolls, L. C. L.; soap, common, in boxes.

Official Classification.

1st class:

Dry goods, N. O. S., in bales or boxes, L. C. L.; boots and shoes, in boxes, L. C. L.; drugs and medicines, N. O. S., L. C. L.; earthen-

ware and crockery, L. C. L.; vehicles, L. C. L.; saddlery, boxed, N. O. S., L. C. L.; sewing machines, S. U., boxed or crated, L. C. L.

2nd class:

Spice, L. C. L.; leather, L. C. L.; printing paper, N. O. S., L. C. L.; machines and machinery, N. O. S., crated or boxed, L. C. L.; matting, L. C. L.

3rd class:

Bags, or bagging, burlaps or gunny, in bales or rolls; cotton bagging, L. C. L.; hardware, N. O. S., L. C. L.; cotton piece goods L. C. L.; vehicles, N. O. S., C. L.; printing paper, L. C. L.

4th class:

Coffee, L. C. L.; sugar, L. C. L.; horseshoes, L. C. L.; matting, N. O. S., C. L.; leather, C. L.; sewing machines, C. L.; wall plaster, N. O. S., L. C. L.

5th class:

Agricultural implements, C. L.; axle grease, C. L.; Babbitt metal, C. L.; printing paper, N. O. S., and newspaper, C. L.; machines and machinery, N. O. S., C. L.; school slates, C. L.

279 6th class:

Coffee, C. L.; grain and grain products, C. L.; plaster, wall, N. O. S., C. L.; rails, old and new, C. L.; roofing tile, C. L.; sugar, C. L.

To the 12th interrogatory, he saith: The southern freight classification provides that unless otherwise specified in the classification the minimum car-load weight of all articles loaded in cars 36 feet in length or less, shall be twenty-four thousand pounds, or twelve tons, when the rate applies per net or gross ton. For cars over 36 feet in length minimum car-load weights are provided in proportion to length of the car. Special minimum car-load weights are provided in the classification for quite a large number of articles, the lowest being ten thousand pounds.

The official classification provides that the minimum car-load weight upon all property in first, second and third classes, in car-loads, shall be twenty thousand pounds, and on property in lower than third class, in car-loads, twenty-four thousand pounds. Actual weight to be charged for when in excess of minimum weight. This classification also provides special minimum car-load weights on a large number of articles, the lowest being ten thousand pounds.

The rates, in dollars, per car-load of ten thousand pounds, from New York to Chattanooga and Nashville would be as follows:

To Chattanooga:

1	2	3	4	5	6
$114.00	98.00	86.00	73.00	60.00	49.00

To Nashville:

1	2	3	4	5	6
91.00	78.00	60.00	42.00	36.00	31.00

Excess of Chattanooga over Nashville, in dollars, per car-load of 10,000 pounds:

1	2	3	4	5	6
$23.00	20.00	26.00	31.00	24.00	18.00

The rates in dollars and cents per car-load of 24,000 pounds from New York to Chattanooga and Nashville would be as follows:

To Chattanooga:

1	2	3	4	5	6
$273.00	235.20	206.40	175.20	144.00	117.60

280 To Nashville:

1	2	3	4	5	6
$218.00	187.20	144.00	100.80	86.40	74.40

Excess of Chattanooga over Nashville, in dollars and cents per car-load of 24,000 pounds:

1	2	3	4	5	6
$55.20	48.00	62.40	74.40	57.60	43.20

To the 13th interrogatory he saith: While there are a large number of articles which are placed in the same class in both classifications there are many articles in each classification which are classed lower than in the other. I am unable to state which is the lower as a whole, as in order to determine this definitely it would be necessary to make a comparison of the two classifications as to each article, which would be a very tedious and laborious task.

To the 14th interrogatory he saith: I give below a statement showing a few of the articles which are classed lower in the official classification than in the southern classification, also, the class rates on such articles to Chattanooga and Nashville, and the difference in rate in favor of Nashville:

Statement showing certain articles that are classed lower in the official than in the southern classification; also the rates from New York to Chattanooga and Nashville, Tenn., on such articles and the difference in favor of Nashville.

From New York.	To Chattanooga.		To Nashville.		Difference
Articles.	Southern classification.	Rate per 100 lbs.	Official classification.	Rate per 100 lbs.	In favor of Nashville.
Cigars & cigarettes, boxed (not corded or strapped)	3 times 1	3.42	D. 1	1.82	1.60
Tobacco, plug, in boxes, any quantity	1	1.14	3	.60	.54
Same, released	2	.98	3	.60	.38
Tobacco, leaf, in cases, any quantity	3	.86	4	.42	.44
Chinaware, fine, in bbls. or casks, any quantity	D. 1	2.28	2	.78	1.50
Cheese, in boxes or casks, L.C. L., not released	1	1.14	3	.60	.54
Crockery, in bbls., L. C. L.	1	1.14	4	.42	.72
" " " C. L.	1	1.14	5	.36	.78
Same, released, L. C. L.	2	.98	4	.42	.56
" " C. L.	2	.98	5	.36	.62
Hardware, N. O. S., boxed, any quantity	2	.98	3	.60	.38
Pickles, in glass, C. L.	3	.86	5	.36	.52
Same, released, "	4	.73	5	.36	.37
Starch, in bags, L. C. L.	2	.98	4	.42	.56
" in boxes, L. C. L.	3	.86	4	.42	.44
Starch, C. L	5	.60	6	.31	.29
Tinware, N. O. S., C. L.	2	.98	4	.42	.56
Typewriters & calagraphs, boxed or crated, C. H.	1	1.14	3	.60	.54

281 To the 15th interrogatory, he saith: I give below statement showing a number of articles which are classed lower in the southern than in the official classification, also, the class rates on such articles from New York to Chattanooga and Nashville. The difference in favor of Nashville is also shown, except in the case of cotton piece goods which take same rate to both points. These goods take 5th class in the southern and 3rd class in the official classification. The 5th-class rate to Chattanooga and the 3rd-class rate to Nashville being the same, viz: 60 cents per hundred pounds:

Statement showing certain articles that are classed lower in the southern than in the official classification; also the rates on such articles from New York to Chattanooga and Nashville, Tenn., and the difference in favor of Nashville.

From New York to Chattanooga.			Nashville.		Difference
Articles.	Southern classification.	Rate per 100 lbs.	Official classification.	Rate per 100 lbs.	In favor Nashville.
Agricultural implements, C. L...	6	49	5	36	13
Cotton piece goods.....	5	60	3	60	
Coffee, single sacks, L. C. L	4	73	4	42	31
Coffee, single sacks, C. L	4	73	6	31	42
Coffee, double sacks, L. C. L....	6	49	4	42	07
Coffee, double sacks, C. L.....	6	49	6	31	18
Sugar, N. O. S. in bbls., L. C. L..	6	49	4	42	07
Sugar, N. O. S. in bbls., C. L....	6	49	6	31	18
Crackers, C. L	5	60	4	42	18
Handles, wooden, N. O. S.	6	49	5	36	13
Nails & spikes, in kegs, L. C. L..	6	49	4	42	07
Nails & spikes, in kegs, C. L.....	6	49	5	36	13
Leather, in boxes, L. C. L.	3	86	2	78	08
Molasses, in bbls. or hhds., L.C. L.	6	49	4	42	07
Molasses, in bbls. or hhds., C. L.	6	49	5	36	13

To the **16th** interrogatory, he saith: The following articles are given special commodity rate from New York to Nashville but not to Chattanooga:

Blankets, boots and shoes, buttons, carpets, clothing, collars, combs, comfortables, corsets, drugs, N. O. S., dry goods. N. O. S., fans, folding, gloves, hats, caps, hosiery, matting, medicine, millinery, notions, pins, rugs, shirts silks, suspenders, table oilcloths, thread, umbrellas, underware, waddings.

The special rate New York to Nashville on the above articles is 85 cents per hundred pounds. Nearly all of these articles are in first class in the southern classification, and the rate to Chattanooga on same would therefore be $1.14 per hundred pounds.

To the 17th interrogatory, he saith: The distance by the
282 short-rail line from Chattanooga to Memphis is 310 miles; from Nashville to same point, 238 miles; from Chattanooga to Charleston, 447, and to Savannah, 417 miles; from Nashville to Charleston, 598, and to Savannah, 568 miles. The shortest rail lines from Boston and New York to Chattanooga and Nashville, with distances, are as follows:

From Boston:

	To Chattanooga. Miles.	To Nashville. Miles.
New England R. R., to Willimantic	86	86
New York, New Haven & Hartford R. R., to New York	128	128
Pennsylvania railroad, to Alexandria	236	236
Southern railway, to Lynchburg	166	166
Norfolk & Western railway, to Bristol	204	204
Southern railway, to Chattanooga	242	242
Nashville, Chattanooga & St. Louis R'y, to Nashville	.....	151
	1,062	1,213

From New York:

	To Chattanooga. Miles.	To Nashville. Miles.
Pennsylvania R. R., to Alexandria	236	236
Southern railway, to Lynchburg	166	166
Norfolk & Western railway, to Bristol	204	204
Southern railway, to Chattanooga	242	242
Nashville, Chattanooga & St. Louis R'y, to Nashville	....	151
	848	999

To the 18th interrogatory, he saith: The roads that reach Nashville are, the Louisville & Nashville and the Nashville, Chattanooga & St. Louis railway. The roads that reach Chattanooga are, the Southern railway; Cincinnati, New Orleans & Texas Pacific railway; Nashville, Chattanooga & St. Louis railway; Western & Atlantic railway, Memphis & Charleston railway; Chattanooga, Rome & Columbus railroad and Chattanooga Southern railroad.

To the 19th interrogatory, he saith: Without undertaking to determine the exact number of practicable transportation lines that may be formed from Boston and New York to Chattanooga
283 and Nashville, will say that as a larger number of roads reach Chattanooga than Nashville, it is my opinion that as many and probably more practicable transportation lines can be formed from Boston and New York to Chattanooga than to Nashville.

To the 20th interrogatory, he saith: Chattanooga was in the year 1892, also before and since that time, shown in all tariffs naming rates from points outside to points in that territory in the list of competitive or common points. It was so shown in the tariffs of the Southern Railway & Steamship Association during the existence of that association.

To interrogatories from No. 21 to 29, both inclusive, he saith: I give below a statement showing the short-line distances from Chattanooga

and Nashville to points named in interrogatories Nos. 21 to 29, inclusive.

Table Showing Short-line Distances from Chattanooga and Nashville, Tennessee, to Points Named.

From Chattanooga, Tenn., Via N., C. & St. L. R'y,	To	From Nashville, Tenn., Via N., C. & St. L. R'y,
Miles.		Miles.
38	Stevenson	113
28	Bridgeport	123
69	Decherd	82
82	Tullahoma	69
Via M. & C. R. R.,		Via Short line,
56	Scottsboro	131
72	Woodville	147
Via So. R'y,		Via N., C. & St. L. R'y,
29	Cleveland, Tenn	180
Via So. R'y,		N., C. & St. L. R'y, So. R'y,
56	Athens, Tenn	207
Via A. G. S. R. R.,		N., C. & St. L. R'y, A. G. S.
40	Valley Head, Ala	191
51	Fort Payne, Ala	202
Via Chatt. So. R'y,		N., C. & St. L. R'y, Chatt. So. R'y,
55	Jamestown	206
38	Harrisburg	189
27	Lafayette, Ga	178
45	Summerville, Ga	196
284		
Via So. R'y,		N., C. & St. L. R'y, So. R'y,
27	Cohutta, Ga	173
35	Waring, Ga	186
Via W. & A. R'y,		N., C. & St. L. R'y, W. & A. R'y,
54	Resaca, Ga	205
69	Adairsville, Ga	220
Via Q. & C. R.,		N., C. & St. L. R'y, Q. & C. R.,
38	Dayton	189
55	Spring City	206

To the 30th interrogatory, he saith: I can state nothing further.

JESSE M. SMITH.

I, Eugene L. Gaddess, of Washington, D. C., the commissioner named in the stipulation attached to the interrogatories herein, do certify that I called before me the witness, Jesse M. Smith, and after having duly sworn him to speak the truth, the whole truth, and nothing but the truth, took down his answers to said interrogatories, and that the foregoing pages contain a full, true and correct report of the testimony given by said witness. This the 25th day of August, 1897.

EUGENE L. GADDESS,
Commissioner.

And afterwards, to wit, on the 2nd day of September, A. D. 1897, the depositions of T. A. Snow *et al.* were filed in the clerk's office of said court, which said depositions are clothed in the words and figures following, to wit:

Depositions of T. A. Snow, I. B. Merriam, M. A. Timothy, W. L. Magill, W. J. Dobbs, and T. H. Payne.

(Endorsed:) Filed Sept. 2, 1897. Crawford T. Johnson, Deputy Clerk.

235 In the Circuit Court of the United States for the Eastern District of Tennessee.

THE INTERSTATE COMMERCE COMMISSION *vs.* THE EAST TENNESSEE, VIRGINIA & GEORGIA RAILway Company *et al.*	In Equity. No. 384.

Stipulation.

In the above-entitled cause it is stipulated and agreed by counsel for the complainant and by counsel for the defendants, that the depositions of the following-named witnesses for the complainant, to wit: T. A. Snow, I. B. Merriam, M. A. Timothy, W. L. Magill, W. J. Dobbs, and T. H. Payne, of Chattanooga, Tennessee, may be taken on the foregoing and annexed direct and cross interrogatories, and may be read in evidence on the hearing of said cause, subject to all exceptions as to relevancy and competency. All formal objections are waived. It is further stipulated and agreed that A. W. Gaines, Esq., of Chattanooga, Tennessee, may act as commissioner in taking said depositions. The issuance of commission to him and formal caption and certificate by him are waived.

L. A. SHAVER,
Counsel for the Interstate Commerce Commission.
ED. BAXTER,
Counsel for the Defendants as of Record.

In the Circuit Court of the United States for the Eastern District of Tennessee.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE EAST TENNESSEE, VIRGINIA & GEORGIA RAILway Company *et al.*
} In Equity. No. 384.

Interrogatories in the above-entitled cause on behalf of the complainant therein and to be exhibited to T. A. Snow, I. B. Merriam, M. A. Timothy, W. L. Magill, W. J. Dobbs, and T. H. Payne, of Chattanooga, Tennessee.

286 Interrogatory No. 1. What is your name and place of residence and in what occupation or business are you engaged?

Interrogatory No. 2. If you say you reside at Chattanooga, Tenn., state how long you have resided there, how long you have been engaged in business there, and in what business?

Interrogatory No. 3. State whether merchants of Chattanooga, Tenn., sell goods and do business in the same territory as merchants of Nashville, Tenn., and if so, describe such territory?

Interrogatory No. 4. Name points or localities in which Nashville merchants compete for business with Chattanooga merchants and state how far such points or localities are from Chattanooga, and how far from Nashville?

Interrogatory No. 5. State whether Chattanooga merchants, in competing with Nashville merchants at the points named in answer to the preceding interrogatory are subject to any disadvantage, and if so, state what this disadvantage results from?

Interrogatory No. 6. If in answer to the preceding interrogatory you say such disadvantage exists and results from a discrimination in rates in favor of Nashville and against Chattanooga, give examples of this discrimination in rates in the sale of dry goods, groceries, hardware and other commodities or classes of merchandise?

Interrogatory No. 7. State how long this discrimination in favor of Nashville and against Chattanooga has existed and what effect if any it has upon the business and prosperity of Chattanooga?

Interrogatory No. 8. State the population and mercantile and manufacturing enterprises of Chattanooga.

Interrogatory No. 9. Do transportation rates or charges enter into and affect the prices at which yourself and other Chattanooga merchants can sell goods to consumers?

Interrogatory No. 10. How would a reduction in the rates on goods of all classes from New York and other eastern cities to Chattanooga so as to make the Chattanooga rates not higher than the rates to Nashville affect the prices at which Chattanooga merchants could sell goods to their customers? Would such reduction in rates lower or raise such prices?

Interrogatory No. 11. How do prices of goods affect their sale of consumption? Are more goods sold to consumers when goods are

cheap, or when they are high? What is your opinion and experience in reference to this matter?

287 Interrogatory No. 12. Will a reduction in the rates on all classes of goods from New York and other eastern cities to Chattanooga so as to make them not higher than the rates to Nashville, increase or diminish the tonnage of traffic which will be hauled by the carriers to Chattanooga? Give your reasons for whatever opinion you may express in answer to this interrogatory?

Interrogatory No. 13. What effect, if any, do relatively low or preferential rates to a locality have in increasing the population of such locality and inducing the investment of capital at such locality and in promoting the prosperity of such locality in other respects?

Interrogatory No. 14. What effect, if any, do relatively high rates to a locality or rates which discriminate against a locality have on its prosperity or progress in the respects named in the preceding interrogatory?

Interrogatory No. 15. What is the distance by short-rail line from Chattanooga to Memphis and from Nashville to Memphis?

Interrogatory No. 16. State whether traffic can be shipped from New York and other eastern cities by ocean or gulf to New Orleans and thence by the Mississippi river to Memphis and thence by rail to Chattanooga?

Interrogatory No. 17. What is the distance by the short rail line from Charleston and Savannah respectively to Chattanooga and from Charleston and Savannah, respectively, to Nashville?

Interrogatory No. 18. State whether the bulk of the traffic from New York and other eastern cities to Chattanooga comes by the all-rail lines through Bristol and Hagerstown to Chattanooga or by sea to Charleston and Savannah and thence by rail to Chattanooga.

Interrogatory No. 19. How does the bulk of the traffic from New York and other eastern cities comes to Nashville—by the all-rail lines or by sea and rail via Charleston and Savannah?

Interrogatory No. 20. State whether traffic can be and is transported from New York and other eastern cities via Cincinnati and thence over the Cincinnati, New Orleans & Texas Pacific railway to Chattanooga.

Interrogatory No. 21. What is the distance by the short-rail lines from Cincinnati to Chattanooga and from Cincinnati to Nashville?

Interrogatory No. 22. State how many railroads actually reach Nashville and whether or not the Nashville, Chattanooga and St. Louis railroad is under the control or owned by the Louisville & Nashville Railroad Company?

288 Interrogatory No. 23. Name the railroads which actually reach Chattanooga and state which of those roads actively and actually compete for business from New York and other eastern cities to Chattanooga.

Interrogatory No. 24. Is there any transportation via the Tennes-

see river between Chattanooga and Ohio and Mississippi River points or is such transportation practicable?

Interrogatory No. 25. What goods or commodities constitute the bulk of the traffic from New York and other eastern cities to Chattanooga?

Interrogatory No. 26. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

L. A. SHAVER,
Counsel for the Commission.

Cross-examination waived.

ED. BAXTER,
Sol. for Def'ts as of Record.

In the Circuit Court of the United States for the Eastern District of Tennessee.

THE INTERSTATE COMMERCE COMMISSION *vs.* THE EAST TENNESSEE, VIRGINIA & GEORGIA Railway Company *et al.* | In Equity. No. 384.

Depositions of T. A. Snow, I. B. Merriam, M. A. Timothy, W. L. Magill, W. J. Dobbs, and T. H. Payne, of Chattanooga, Tennessee, witnesses for the complainant, in the above case, taken by stipulation and agreement by counsel upon interrogatories on the 19 to 31 days of August, 1897, at the office and in the presence of A. W. Gaines, commissioner, at Chattanooga, Tenn.

The witness, W. L. MAGILL, being duly sworn, to speak the truth, the whole truth and nothing but the truth, doth depose as follows:

To the first interrogatory, the witness answers:

289 W. L. Magill, Chattanooga, Tennessee, hardware business.

To the second interrogatory, witness answers:

I have lived in Chattanooga for eighteen years. I have been in the hardware business that long, I mean that I have been in the hardware business in Chattanooga that long.

To the third interrogatory he saith:

Yes; they do. The merchants of Chattanooga sell goods in Tennessee, Georgia and Alabama on the following lines of railway: Nashville, Chattanooga & St. Louis R'y; Memphis & Charleston R. R.; Alabama Great Southern R'y; W. & A. R. R.; Southern railway and Tennessee river. Also on the Cincinnati Southern railroad, the Chattanooga Southern R. R., and on the Chattanooga, Rome & Columbus R. R. With the possible exception of the Chattanooga Southern and the Chattanooga, Rome & Columbus R'r's the merchants of Nashville sell goods on all the aforesaid lines of transportation.

To the fourth interrogatory he answers:

Bridgeport, Ala., 28 miles from Chattanooga, 123 from Nashville; South Pittsburg, Tenn., 34 miles from Chattanooga, 129 from Nashville; Dunlap, Tenn., 62 miles from Chattanooga, 151 miles from Nashville; Pikeville, Tenn., 82 miles from Chattanooga, 171 miles from Nashville: Stevenson, Ala., 38 miles from Chattanooga, 113 miles from Nashville; Cowan, Tenn., 64 miles from Chattanooga, 187 miles from Nashville; Winchester, Tenn., 71 miles from Chattanooga, 80 miles from Nashville.

All the foregoing places are on the Nashville, Chattanooga & St. Louis R'y; Bridgeport, Ala., and South Pittsburg, Tenn., are also on the Tennessee river.

Scottsboro, Ala., 56 miles from Chattanooga and 125 from Nashville; Larkensville, Ala., 62 miles from Chattanooga and 131 from Nashville; Gurleys, Ala., 74 from Chattanooga 173 from Nashville; the last three named places are on the Memphis & Charleston R. R.; Rising Fawn, Ga., 26 miles from Chattanooga and 177 from Nashville; Fort Payne, Ala., 51 miles from Chattanooga and 202 from Nashville; Collinsville, Ala., 66 miles from Chattanooga and 217 from Nashville; these last three places being on the Alabama Great Southern R. R.; Ringgold, Ga., 23 miles from Chattanooga and 174 from Nashville; Tunnel Hill, Ga., 31 miles from Chattanooga and 182 from Nashville; Dalton, Ga., 38 miles from Chattanooga and 189 miles from Nashville; Calhoun, Ga., 60 miles from Chattanooga and 211 from Nashville; Cartersville, Ga., 90 miles from Chattanooga and 241 from Nashville; Acquorth, Ga.,
290 100 miles from Chattanooga and 251 from Nashville; the last six named places are on the Western & Atlantic R. R.; Cleveland, Tenn., 29 miles from Chattanooga and 180 miles from Nashville; Athens, Tenn., 56 miles from Chattanooga and 207 from Nashville; these two places are on the Southern R'y.

Rathburn, Tenn., 22 milesfrom Chattanooga, 173 miles to Nashville; Dayton, Tenn., 38 miles from Chattanooga, 189 to Nashville; Rockwood, Tenn., 70 miles from Chattanooga, 221 from Nashville; these last three places are on the Cincinnati Southern railway.

These are only some of the principal places within this territory.

To the fifth interrogatory he answers:

Chattanooga merchants are at some disadvantage owing to the fact that Nashville merchants have a lower freight rate from the East than Chattanooga merchants have.

To the sixth interrogatory he says:

The rate on hardware from New York to Chattanooga is 98 cents per 100 pounds, and the rate on hardware from New York to Nashville is seventy-eight cents per one hundred pounds. This means that Nashville merchants pay a rate of about twenty-five per cent. less freight on hardware from New York than do Chattanooga merchants.

To the seventh interrogatory he answers:

This discrimination has, I think, existed ever since I have been in business in Chattanooga, that is for the past eighteen years. It

has had the effect of retarding business and prosperity of Chattanooga.

To the eighth interrogatory he saith:

According to our last city directory, which was issued June, 1897, Chattanooga and its immediate suburbs, has a population of about forty-nine thousand.

There are from 55 to 60 manufacturing establishments and some 25 or 30 jobbing ones.

To the 9th interrogatory he answers:

Yes; they do.

To the 10th interrogatory he answers:

It would lower prices and enable us to better meet competition from Nashville.

To the 11th interrogatory he answers:

When the country is prosperous and goods are high-priced on this account, sales are large, that is, it is easier to sell goods on a rising than on a falling market. But when the price of goods is increased by a local cause, or when the prices in one place are higher than those in another because of discrimination in freight rates,
291 or any other such cause, the sales made there will fall off in comparison with those made in a competing market which is not so affected.

To the 12th interrogatory he answers:

I think it will increase the tonnage.

The reason is that Chattanooga will be enabled to sell more goods.

To the 13th he answers:

A city which enjoys low or preferential freight rates is enabled better to compete in their sales with other markets and this tends to build up and benefit merchants and manufacturers.

To the 14th interrogatory he answers:

It tends to retard its growth and prosperity.

To the 15th interrogatory he answers:

Chattanooga is about 315 miles; Nashville to Memphis about 238.

To the 16th interrogatory he answers:

It could be done, but goods would be so long in coming over this route that we have never considered it.

To the 17th interrogatory he answers:

From Charleston to Chattanooga is 443 miles, to Nashville, 594; from Savannah to Chattanooga is 432 miles, to Nashville is 583.

To the 18th interrogatory he answers:

Speaking for hardware—the following three routes (1) the Southern R'y through Bristol and Hagerstown; (2) the C., N. O. & T. P. through Cincinnati, and (3) by sea to Charleston and Savannah and thence by rail to Chattanooga, divide the business somewhat equally among them.

To the 19th interrogatory he answers:

I do not know.

To the 20th interrogatory he answers:

Yes, it can be and is all the time.

To the 21st interrogatory he answers:

From Cincinnati to Nashville is 295 miles and from Cincinnati to Chattanooga is 335.

To the 22nd he answers:

I do not know how many roads reach Nashville, but I understand the L. & N. R. R. Co. either owns or controls the N., C. & St. L. R. R.

To the 23rd interrogatory he answers:

The following roads reach Chattanooga: C., N. O. & T. P.; Southern; W. & A.; C., R. & C.; A. G. S.; Chattanooga Southern; M. & C.; N., C. & St. L. The first four of those above-named compete for eastern freight.

To the 24th interrogatory he answers:

292 No boats are in operation now, but it is practicable.

To the 25th interrogatory he answers:

Dry goods, groceries, drugs, hardware, &c.

To the 26th interrogatory he answers:

I know nothing further.

W. L. MAGILL.

The said witness, T. H. PAYNE, being duly sworn to speak the truth, the whole truth and nothing but the truth, doth depose as follows:

To the 1st interrogatory he answers:

T. H. Payne, Chattanooga, Tenn. Books, stationery and wall paper; and chairman of committee on freight rates of chamber of commerce of Chattanooga.

To the 2nd interrogatory he answers:

Have resided in Chattanooga thirty-three years and been engaged in the book, stationery and wall-paper business for thirty-one years.

To the third interrogatory he answers:

Merchants of Chattanooga sell goods and do business in same territory as Nashville.

Along the Nashville, Chattanooga and St. Louis railroad, and its branches and all roads centering in Chattanooga.

To the 4th interrogatory he answers:

Whiteside	14	miles	from	Chattanooga,	137	from	Nashville.
Bridgeport.....	29	"	"	"	122	"	"
So. Pittsburg.....	34	"	"	"	117	"	"
Jasper.....	40	"	"	"	111	"	"
Stevenson	39	"	"	"	112	"	"

To the 5th interrogatory he answers:

The advantage Nashville merchants have over those of Chattanooga in selling goods in this territory is in getting a lower freight rate from the East.

To the 6th interrogatory he says:

The disadvantage to Chattanooga merchants in competing with Nashville arises from the fact that Nashville rates from the East are lower than to Chattanooga.

In the stationery line—paper and envelopes to Nashville are 78 cents, to Chattanooga 98 cents—a difference of 20 cents per 100 pounds in the freight from New York.

Nashville merchants can sell all the heavy and bulky goods such as paper and envelopes at the price Chattanooga merchants pay and make a living profit.

Another item, roofing slate to Chattanooga by car-load lots 30 cents per 100 lbs., to Nashville 30 cents.

School slates in less than car-load lots freight to Nashville
293 ,42 cents, freight to Chattanooga 86 cents. At the average price of slates from one year to another, it costs about 40 cents on the dollar to lay them down in Chattanooga, while the same goods are hauled 151 miles further and laid down in Nashville for about 20 cents on the dollar, making a difference of about 20 per cent in favor of Nashville, which prohibits the sale of these goods by Chattanooga merchants in territory reached by Nashville.

To the 7th interrogatory he answers:

For years. Depressing on business and retards prosperity by not being on an equal footing in selling merchandise.

To the 8th interrogatory he answers:

Population of Chattanooga and immediate suburbs about 49,000. The number of jobbers about 26, of manufacturers about 57.

To the 9th interrogatory he answers:

They do.

To the 10th interrogatory he answers:

It would lower the price.

To the 11th interrogatory he answers:

If low increases consumption. More are sold when goods are low. If not discriminated against more business would be done in Chattanooga.

To the 12th interrogatory he answers:

Increase. Merchants could handle more lines and find more customers if on an equal footing with Nashville.

To the 13th interrogatory he answers:

It decreases the cost of living to the consumers, this enables the manufacturer to get more and better labor and enables him to find a ready market for manufactured goods not only in this vicinity but in distant points.

To the 14th interrogatory he answers:

Results in stagnation of business and retards progress and prosperity.

To the 15th interrogatory he answers:

Chattanooga to Memphis, 315 miles; Nashville to Memphis, 238 miles.

To the 16th interrogatory he answers:

It can.

To the 17th interrogatory he answers:

From Charleston to Chattanooga is about 443 miles.

From Savannah to Chattanooga is about 432 miles.

From Charleston to Nashville is about 594 miles.

From Savannah to Nashville is about 583 miles.

To the 18th interrogatory he answers:

Evenly divided.

294 To the 19th interrogatory he answers:

Both.

To the 20th interrogatory he answers:

Yes.

To the 21st interrogatory he answers:

From Cincinnati to Chattanooga is 335 miles. From Cincinnati to Nashville is 295 miles.

To the 22nd interrogatory he answers:

I think the N., C. & St. L. R. R. is under the control or is owned by the Louisville & Nashville Railroad Company.

I do not know of any other roads going into Nashville.

To the 23rd interrogatory he answers:

The following roads reach Chattanooga: Cincinnati, New Orleans & Texas Pacific; Southern; Western & Atlantic; Chattanooga, Rome & Columbus; Alabama Great Southern; Chattanooga Southern; Memphis & Charleston and the Nashville & Chattanooga R. R.

The first of those four above named, viz: C., N. O. & T. P.; Southern; W. & A.; C., R. & C., compete for eastern freight.

To the 24th interrogatory he answers:

No regular line of boats yet. Transportation via Tennessee river to Ohio and Mississippi is practicable.

To the 25th interrogatory he answers:

Dry goods, clothing, hardware, drugs, boots and shoes.

To the 26th interrogatory he answers:

I do not know anything further.

T. H. PAYNE.

The said witness, T. A. SNOW, being duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose as follows:

To the 1st interrogatory he answers:

T. A. Snow, of the T. A. Snow Co., dealers in stoves and house-furnishing goods; Chattanooga, Tenn.

I have lived in Chattanooga, Tenn., twenty-four years and been engaged in the same business twenty-four years.

To the 3rd he answers:

Yes, they do. We sell goods all over the South but our competition with Nashville is especially in north Alabama, north Georgia and east Tennessee.

To the 4th he answers:

Bridgeport, Ala., 28 miles from Chattanooga, 123 from Nashville; South Pittsburg, Tenn., 34 miles from Chattanooga, 129 from

295 Nashville; Scottsboro, Ala., 56 from Chattanooga, 125 from Nashville; Fort Payne, Ala., 51 from Chattanooga, 201 from Nashville; and most all other points within a radius of 125 miles from Chattanooga. The distance from Chattanooga to Nashville is 151 miles.

To the 5th he answers:

Chattanooga merchants are at a disadvantage and the chief cause is that Nashville merchants get a very much lower rate of freight from the East than do Chattanooga merchants.

To the 6th he answers:

I know the Nashville merchants get a much lower rate on tin plates and other goods in our line than we do, and tho' I have heretofore figured out the difference I do not remember the exact figures at present.

To the 7th he answers:

I think it has existed ever since I have been in business, that is twenty-four years; we could never sell and make the same profits as the Nashville merchants. This discrimination has seriously affected the prosperity of Chattanooga.

To the 8th he answers:

According to our recent city directory, Chattanooga and its immediate suburbs have a population of about 49,000.

There are from 60 to 70 manufacturing establishments in Chattanooga and about 25 to 30 jobbing houses.

To the 9th he answers:

Of course it does.

To the 10th interrogatory he answers:

It would enable us to make lower prices so as to compete with Nashville.

To the 11th interrogatory he answers:

More goods are sold to merchants on a rising than a falling market; when times are good a greater demand is created for goods. But the increase of prices on account of local causes will decrease the sale of goods in comparison with competing markets.

To the 12th interrogatory he answers:

It would increase the tonnage. We would sell more goods.

To the 13th he answers:

Low rates of freight is a great inducement to a manufacturer to invest and settle in a city, because he can better compete with other manufacturing cities.

To the 14th he answers:

It retards the business in every respect, both manufacturers and merchants.

To the 15th he answers:

296 Chattanooga is about 315 miles from Memphis; from Nashville to Memphis about 238.

To the 16th he answers:

I suppose it might be done, but we have never tried it.

To the 17th he answers:

From Charleston to Chattanooga is about 443 miles and from Charleston to Nashville is about 594 miles; from Savannah to Chattanooga is about 432 miles and to Nashville about 583 miles.

To the 18th he answers:

My own goods comes mostly by way of Charleston.

To the 19th he answers:

I do not know, but a great deal of it comes through Chattanooga.

To the 20th he answers:
Yes, it comes that way.
To the 21st he answers:
From Cincinnati to Chattanooga is 335 miles, from Cincinnati to Nashville is 295 miles.
To the 22d he answers:
I understand that the Louisville & Nashville R. R. Co. owns or controls all the lines of railroad going into Nashville.
To the 23rd he answers:
Southern R'y; C. N. O. & T. P. R. R.; Memphis & Charleston; Nashville, Chattanooga & St. Louis; Western & Atlantic; Alabama Great Southern; Chattanooga, Rome & Columbus, and Chattanooga Southern.
The following compete for traffic from the East: The Southern R'y, the C. N. O. & T. P. through Cincinnati, the Nashville & Chattanooga, and the Western & Atlantic.
To the 24th he answers:
It is practicable, but the boats are not running now regularly; sometimes they run.
To the 25th he answers:
Dry goods, hardware, boots and shoes; stamped ware, tin plate and various kinds of merchandise.
To the 26th he answers:
We want to be on an equal basis with Nashville in freight rates from the East so as to compete with Nashville in making our prices to sell by. There are no further facts that I know of.

T. A. SNOW.

The said witness, W. J. DOBBS, being duly sworn to tell the truth, the whole truth, and nothing but the truth, doth depose as follows:

297 To the first interrogatory he answers:
W. J. Dobbs; wholesale grocery business; Chattanooga, Tennessee.
To the 2nd he answers:
I have lived in Chattanooga about forty years. I have been in the grocery business for twenty-five years.
To the 3rd he answers:
We do business in the same territory with Nashville. We come into competition with Nashville merchants in Tennessee, Georgia and Alabama on the following lines of railroad: N. C. & St. L., Memphis & Charleston; Southern; Alabama Great Southern and Tennessee river.
To the 4th he answers:
We compete with Nashville principally on the line of the Nashville, Chattanooga & St. Louis R. R.; at Bridgeport, Ala., 28 miles from Chattanooga and 123 miles from Nashville; Dunlap, 62 miles from Chattanooga and 151 from Nashville; Pikeville, Tenn., 82 from Chattanooga and 171 from Nashville; Stevenson, Ala., 38 miles from Chattanooga and 113 from Nashville; Cowan, Tenn., 64

miles from Chattanooga and 87 from Nashville; Winchester, Tenn., 71 miles from Chattanooga and 80 from Nashville.

To the 5th he answers:

Are under some disadvantages owing to the difference in freight rates, as Nashville experiences much lower rates than do Chattanooga merchants from the East.

To the 6th he answers:

The rate of freight on canned goods from Baltimore to Chattanooga is 45 cents in car-load lots, and in less than car-load lots 56 cents. From Baltimore to Nashville the rate is 33 cents in car-load lots and 39 cents in less than car-load lots. Or a difference of almost 40 per cent.

On canned goods from New York to Chattanooga car-load lots 48 cents, less than car-load lots 56 cents. From New York to Nashville, car-load lots 36 cents and on less than car-load lots 42 cents.

On green coffees from Baltimore to Chattanooga, our rate is 46 cents. Baltimore to Nashville the rate is 28 cents.

On green coffees from New York to Chattanooga our rate is 49 cents; from New York to Nashville the rate is 31 cents.

On keg soda from New York to Chattanooga our rate 60 cents; from New York to Nashville the rate is only 36 cents. From New York to Louisville, Ky., the rate is only 12 cents. We have been shipping in car-load lots keg soda to Louisville, Ky., and re-
298 shipping via Nashville to Chattanooga *and* a cost of only 44½ cents; after paying the local rate from Louisville to Nashville and from Nashville to Chattanooga, we make a saving of over 15 cents.

On baking powders from New York to Chattanooga on less than car-load lots 86 cents and on car-load lots 73 cents. From New York to Nashville in less than car-load lots 60 cents and on car-load lots 42 cents.

To the 7th he answers:

The freight discrimination in favor of Nashville has existed for years and years, ever since I have been in business.

It has prevented the Chattanooga jobber from reaching out into the territory properly belonging to Chattanooga. The Chattanooga jobbers can only sell in the extreme part of their territory such goods as rates of freight do not enter their consideration, for instance—on account of their lightness—as extracts, blueing, and other small items. Also goods sold on equality plan; that is where the buyer is allowed the freight from the shipping point to his destination or a delivered price named by the manufacturer putting every jobber on an equal footing regardless of his location.

To the 8th interrogatory he answers:

The population of Chattanooga is I guess in the neighborhood of 50,000. I cannot give the number of jobbing and manufacturing enterprises of Chattanooga.

To the 9th interrogatory he answers:

Certainly.

To the 10th interrogatory he answers:

It would enable the Chattanooga jobber to name lower prices to his customers.

To the 11th he answers:

If we can name a lower price than other jobbing points we can reach out and sell more goods. On a rising market the demand is greater, therefore we sell more goods than on a weak market; when everything is declining the demand is less. But if the increased price is due to freight rates our customer will go to a town that has a lower rate of freight.

To the 12th he answers:

A reduction to Chattanooga from New York and other eastern points in freight rates placing the Chattanooga jobber on an equal footing with Nashville would naturally increase business and thereby give the railroad companies more tonnage.

To the 13th he answers:

It would be an inducement to attract merchants and manufacturers to the city.

299 To the 14th he answers:

It has a tendency to break down commerce and prevents a merchant from increasing his force, decreases profits and paralyzes business in general.

To the 15th he answers:

From Chattanooga to Memphis is about 330 miles; from Nashville to Memphis about 240.

To the 16th he answers:

It can be done, but it would be such a distance as would be impracticable.

To the 17th he answers:

I think the distance from Charleston to Chattanooga is about 450 miles and from Charleston to Nashville about 600 miles. From Savannah to Chattanooga is about 432 miles and to Nashville 583 miles.

To the 18th he answers:

Groceries from eastern points are about equally divided between the different routes leading to Chattanooga.

To the 19th he answers:

To the best of my information about three-fourths of the goods from the East to Nashville come through Chattanooga.

To the 20th he answers:

We route some goods via Cincinnati over the Cincinnati, New Orleans & Texas Pacific R. R. to Chattanooga.

To the 21st he answers:

From Cincinnati to Chattanooga is 335 miles and from Cincinnati to Nashville is 295 miles.

To the 22nd he answers:

I do not know how many roads enter Nashville. My understanding is that the C., N. & St. L. R. R. is owned and controlled by the L. & N. Company.

To the 23rd he answers:

The following roads reach Chattanooga: Southern; W. & A.; C. R. & C.; A. G. S.; Chattanooga Southern; M. & C.; N., C. & St. L.; C., N. O. & T. P. The W. & A. and Southern roads bring most of the eastern freight into Chattanooga.

To the 24th he answers:

At present there is no transportation company operating between Mississippi and Ohio River points and Chattanooga.

Some time ago Chattanooga merchants operated a boat line between above points, but it was not a success from the fact that the boat was not the kind of boat that was required for such traffic and was operated by inexperienced men who could not give it
300 their personal attention. I feel confident that with a boat built for the purpose that it would be possible and practicable to operate between Chattanooga and the above points.

To the 25th interrogatory he answers:

The bulk of the goods we receive from the East are green coffees, sugars, sodas, baking powders and all kinds of canned goods. And other items handled by other merchants.

To the 26th interrogatory he answers:

Chattanooga does not ask any favors—only a fair show. Give us equal rates from the East with Nashville and our trade would double in a very short time. The practical outcome of all this is shown in the following statement of the discrimination of rates operating against Chattanooga and in favor of Nashville.

	From New York to Nashville.	To Chattanooga.
First class	91 cents	114 cents.
Second class	78 "	98 "
Third class	60 "	86 "
Fourth class	42 "	73 "
Fifth class	36 "	60 "
Sixth class	31 "	49 "

From New York to Nashville is 1,014 miles, to Chattanooga 863.

	From Philadelphia to Nashville.	To Chattanooga.
First class	85 cents	108 cents.
Second class	72 "	92 "
Third class	58 "	84 "
Fourth class	40 "	71 "
Fifth class	34 "	58 "
Sixth class	29 "	47 "

From Philadelphia to Nashville is 924 miles, to Chattanooga, 773.

	From Baltimore to Nashville.	To Chattanooga.
First class	83 cents	106 cents.
Second class	70 "	90 "
Third class	57 "	83 "
Fourth class	39 "	70 "
Fifth class	33 "	57 "
Sixth class	28 "	46 "

From Baltimore to Nashville is 810 miles, to Chattanooga 659.

Such discriminations existing as the above rates, it is utterly impossible for Chattanooga merchants to maintain their
301 legitimate territory. It is absolutely wrong for Nashville to have such material advantage in competing with others in a common market. Chattanooga merchants are entitled to their natural advantages. It is very subduing to Chattanooga jobbers when competing with Nashville merchants to know that Nashville enjoys so much lower rates from all points, regardless of geographical location.

There are comparatively few goods shipped from the East to either Chattanooga or Nashville via Cincinnati. Nearly all shipments from the East to Nashville come through Chattanooga, as the distance from New York to Nashville via Chattanooga is 1,014 miles and from New York to Nashville via Cincinnati is 1,053 miles.

The through rate from the East to Chattanooga is in many instances higher than the rate through from New York to Chattanooga via Nashville, paying local rates from Nashville to Chattanooga. In other words, sometimes goods are shipped in car-load lots to Nashville and reshipped to Chattanooga, taking the local rate out of Nashville to Chattanooga a slight saving is made over the through rate from New York to Chattanooga.

W. J. DOBBS.

The said witness, I. B. MERRIAM, being sworn to speak the truth, the whole truth and nothing but the truth, doth depose as follows:

To the 1st interrogatory he answers:

My name is I. B. Merriam; reside in Chattanooga, Tenn.; and am engaged in the wholesale grocery business.

To the second interrogatory he answers:

About eighteen years; have been engaged in the wholesale grocery business about eighteen years.

To the 3rd interrogatory he answers:

Yes. All points between Chattanooga and Nashville along the N., C. & St. L. R. R. within 75 miles of Chattanooga, along the Alabama Great Southern R. R., M. & C. R. R. and in northern Alabama and middle Tennessee.

To the 4th interrogatory he answers:

Bridgeport, 28 miles from Chattanooga; 123 from Nashville.

Dalton, 38 miles from Chattanooga; 189 from Nashville.

Fort Payne, Ala., 51 from Chattanooga; 202 from Nashville; and other places.

To the 5th interrogatory he answers:

302 The Chattanooga merchants are at a disadvantage in competing with Nashville merchants, and this arises from the fact that the rates from the East on freight are so much lower to Nashville than to Chattanooga that it enables the merchants of Nashville to reship their goods and sell them at lower rates than is possible for Chattanooga merchants in the same territory.

To the 6th interrogatory he answers:

The rate from New York to Nashville on coffee is 31 cents, pass-

ing through Chattanooga; and from New York to Chattanooga 49 cents, enabling Nashville to ship coffee from New York to Nashville and come back to Chattanooga on the same line for less than Chattanooga gets her rates from New York.

Canned goods from Baltimore to Nashville cost 35 cents per 100 pounds and to Chattanooga 48 cents, giving them the same advantage as in coffee.

This discrimination in favor of Nashville and against Chat., continues on all other lines shipped from the East.

To the 7th interrogatory he answers:

As long as I have been in the grocery business in Chattanooga—eighteen years.

To the 8th interrogatory he answers:

The population of Chattanooga and suburbs is about 49,000. There are four wholesale grocery houses in Chattanooga, doing a business annually of between $2,000,000 and $3,000,000. The manufacturing interests are very large, but I am not posted as to the amount of business done by them.

To the 9th interrogatory he answers:

It does affect prices.

To the 10th interrogatory he answers:

It would lower the prices to Chattanooga consumers.

To the 11th interrogatory he answers:

The lower the price the greater the consumption. The lower the price the greater the bulk sold.

To the 12th interrogatory he answers:

It will increase it. It will enable Chattanooga merchants to compete with Nashville merchants at all points and sell a greater volume of goods.

To the 13th interrogatory he answers:

Low rates to a locality increase the commercial trade and induce men to invest capital in business. And the greater the number of business houses the greater the number of employés and of population. They advance the prosperity of the place in every respect.

To the 14th interrogatory he answers:

High rates of freight keep out business of every character.

303 To the 15th interrogatory he saith:

The distance from Chattanooga to Memphis is 315 miles and from Nashville is 238 miles.

To the 16th interrogatory he answers:

It can, but goods are not shipped over this route to Chattanooga in any appreciable amount.

To the 17th interrogatory he answers:

Charleston to Chattanooga, 447 miles; Savannah to Chattanooga, 432 miles; Charleston to Nashville, 590, Savannah to Nashville, 583 miles.

To the 18th he answers:

I believe the bulk of freight comes by water via Norfolk, Savannah and Charleston and thence by rail to Chattanooga.

To the 19th interrogatory he answers:

I believe via Charleston, Norfolk and Savannah and then by rail to Chattanooga and then to Nashville.

To the 20th he answers:

Freight is transported via Cincinnati by rail to Chattanooga.

To the 21st he answers:

The distance from Cincinnati to Chattanooga is by rail 335 miles. Cincinnati to Nashville 295 miles by rail.

To the 22nd interrogatory he answers:

Nashville, Chattanooga & St. Louis and the Louis. & Nashville. Don't know as to the control or ownership.

To the 23rd he answers:

The following roads enter Chattanooga: A. G. S.; Southern; Cincinnati Southern; C., R. & C.; Memphis & Charleston; Western & Atlantic; N., C. & St. L.; Jasper branch of N., C. & St. L., and the Belt road.

The following four compete for the New York trade: Southern, known as the East Tennessee, Virginia & Georgia R. R.; N., C. & St. L., or Western Atlantic; C., N. O. & T. P., or Queen & Crescent, and the C., R. & C.

To the 24th he answers:

There is from St. Louis and other points on the Mississippi and sugar has been shipped from New Orleans.

To the 25th he answers:

Dry goods, groceries, canned goods, clothing and hats, shoes, drugs, hardware and all kinds of merchandise and manufacturing goods.

To the 26th interrogatory he answers:

The rate of freight as given in my testimony from New York to Chattanooga and to Nashville gives Nashville a *a* chance to undersell Chattanooga at all competitive points, and forces Chattanooga out of the market at those points. As an illustration—seven
304 years ago Chattanooga had seven wholesale grocery stores and she now has four. She had two wholesale dry-goods stores, she now has one. She had two wholesale shoe stores; she now has one. The volume of trade has increased in Nashville, but has not increased in Chattanooga.

I. B. MERRIAM.

The said witness, M. A. TIMOTHY, being sworn to speak the truth, the whole truth and nothing but the truth, doth depose as follows:

To the 1st interrogatory he answers:

M. A. Timothy, Chattanooga, Tenn.; in dry-goods business.

To the 2nd interrogatory he answers:

I have lived in Chattanooga for sixteen years; engaged all this time in the dry-goods business.

To the 3rd interrogatory he answers:

Yes, about the same; north Georgia and Alabama, Mississippi and in east and middle Tennessee.

To the 4th interrogatory he answers:

The Nashville, Chattanooga & St. Louis R'y connects Nashville with Chattanooga, the distance between the two points being 151 miles. The merchants of the two cities compete for business on all points on all lines of railroads centering in Chattanooga.

To the 5th interrogatory he answers:

Chattanooga merchants have to pay more freight on goods from the East than do Nashville merchants and therefore cannot compete in the sale of their goods with the latter.

To the 6th interrogatory he answers:

I can only speak for dry goods. The rate of freight on first-class freight from New York to Nashville is 90 cents on the hundred pounds; rate the same from New York to Chattanooga is $1.14 per one hundred pounds.

To the 7th interrogatory he answers:

It has existed a long while, as long as I remember, certainly as much as eight or ten years.

It has the effect of driving trade away from Chattanooga.

To the 8th interrogatory he answers:

Chattanooga and suburbs has from 45,000 to 50,000 population. There are in the city from 25 to 30 jobbers and from 55 to 60 manufacturers.

To the 9th interrogatory he answers:

Most unquestionably it does.

To the 10th interrogatory he answers:

305 It would lower the prices.

To the 11th interrogatory he answers:

My experience is that the cheaper the goods are the greater amount there is consumed.

To the 12th interrogatory he answers:

Yes, it will certainly increase the tonnage. It will enable the Chattanooga merchants to sell more goods and will therefore enable them to bring more goods here as a distributing point.

To the 13th interrogatory he answers:

It increases the business, brings more people to purchase goods, reduces living expenses, it induces the investment of capital and in every way promotes the prosperity of the place.

To the 14th interrogatory he answers:

It will have just the opposite effect from that described in the previous answer.

To the 15th interrogatory he answers:

Chattanooga to Memphis 315 miles; Nashville to Memphis 238 miles.

To the 16th interrogatory he answers:

It can, but I have never had any shipped that way.

To the 17th interrogatory he answers:

I am not informed.

To the 18th interrogatory he answers:

The bulk of the goods shipped from the East to Chattanooga comes by sea to Norfolk, Charleston or Savannah and thence from these respective points by rail to Chattanooga.

To the 19th interrogatory he answers:

It follows exactly the same routes as above mentioned through Chattanooga to Nashville.

To the 20th interrogatory he answers:

I guess it can, but I do not ship any that way.

To the 21st interrogatory he answers:

From Cincinnati to Chattanooga is about 335 miles; from Cincinnati to Nashville 295 miles.

To the 22nd interrogatory he answers:

Only two, the Nashville, Chattanooga & St. Louis R'y and the Louisville & Nashville R. R. I believe the N. C. & St. L. is owned by or is under the control of the L. & N. R. R. Co.

To the 23rd interrogatory he answers:

C., N. O. & T. P.; Southern; W. & A.; Chatta., Rome & Columbus; A. G. S.; Chatta. Southern; Memphis & Charleston and the N. C. & St. L. R. R.

The N. C. & St. L. (controlling the W. & A.) and the Southern complete.

306 To the 24th interrogatory he answers:

There is none that I know of, and I don't think it is practicable.

To the 25th interrogatory he answers:

Dry goods, clothing, coffees, sugar and such goods.

To the 26th interrogatory he answers:

The above are the facts; I do not think I can state anything further.

M. A. TIMOTHY.

I, A. W. Gaines, of Chattanooga, Tenn., the commissioner named in the stipulation attached to the interrogatories herein, do certify that I called before me the said witnesses, to wit: W. L. Magill, T. H. Payne, T. A. Snow, W. J. Dobbs, I. B. Merriam and M. A. Timothy, and after having duly sworn them to speak the truth, the whole truth and nothing but the truth, had their answers to said interrogatories taken down, and that the foregoing pages contain a full, true and correct report of the testimony given by each of said witnesses.

This 2nd day of September, 1897.

A. W. GAINES,
Commissioner.

And afterwards, to wit, on the 1st day of October, A. D. 1898, two letters were filed in the clerk's office of said court, which said letters were clothed in the words and figures following, to wit:

Letters Filed by Defendant.

(Endorsed:) Filed Oct. 1, 1897. Henry O. Ewing, Clerk.

SUN BUILDING,
WASHINGTON, D. C., *September* 29, 1897.

THE INT. COM. COM.
vs.
THE E. T., V. & G. R'Y CO. ET AL. } In Equity. No. 384.

The clerk of the U. S. circuit court, Chattanooga, Tenn.

DEAR SIR: Referring to the depositions which were taken before me in the above-entitled case, which were filed with you in August

last, I have received the attached letter from one of the wit-
307 nesses to whom I sent a copy of the testimony, and I request that this correspondence be filed with his deposition, as under agreement of counsel the witnesses did not have an opportunity to read their depositions after they had been transcribed from the shorthand notes. My original shorthand notes agree with the testimony as filed, that is the word reads "similar."

Very respectfully, FRANK LYON.

Louisville & Nashville Railroad Company. Office of the traffic manager; Y. van den Berg, traffic manager.

LOUISVILLE, KY., *September* 14, 1897.

Mr. Frank Lyon, 1317 *Front* street N. W., Washington, D. C.

DEAR SIR: Please see page 27 of case No. 13 (Mr. Baxter's number) I. C. C. *vs.* E. T., V. & G. Railway Co. *et al.*

I am incorrectly quoted in my answer to cross-interrogatory No. 44, *i. e.*, "So far as my knowledge goes no exception has been made in making a greater charge for the shorter than for the longer distance under similar circumstances and conditions."

It should read, "under dissimilar circumstances and conditions."

In other words, the meaning I intended to convey is that under dissimilar circumstances and conditions I know of no exception having been made in charging more for the shorter than for the longer distance.

Please make the necessary correction. I have sent copy of this to Mr. Baxter.

Yours truly, Y. VAN DEN BERG,
Traffic Manager.

And afterwards, to wit: on the 27th day of October, A. D. 1897, a certain tabulated statement was filed in the clerk's office of said court, which said tabulated statement is clothed in the words and figures following, to wit:

Tabulated Statement.

(Endorsed:) Filed Oct. 27, 1897. Crawford T. Johnson, Deputy Clerk.

Name of road.	1892. Average receipts per ton per mile.	1892. Estimated cost of carrying one ton one mile.	1893. Average receipts per ton per mile.	1893. Estimated cost of carrying one ton one mile.	Average receipts per ton per mile. 1894.	1895.	1896.
I.	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*
1. Louisville & Nashville R. R.	.948	.621	.917	.614	.876	.831	.806
2. Nashville, Chattanooga & St. Louis R'y	1.035	.599	1.067	.610	1.043	.920	.925
3. Cincinnati, New Orleans & Texas Pac. R'y	.779	.571	.745	.576	.757	.724	.720
II.							
1. Pennsylvania R. R.	.647	.448	.620	.447	.606	.565	.563
2. New York, New Haven & Hartford R. R.	1.747	1.425	1.867	1.477	1.864	1.658	1.570
3. Pittsburg, Cincinnati, Chic. & St. L. R'y	.706	.551	.709	.557	.674	.692	.673
4. Fitchburg R. R.	.925	.712	.923	.707	.895	.878	.864
5. West Shore R. R. (1)							
6. Lake Shore & Michigan Southern R'y	.592	.416	.599	.421	.587	.567	.551
7. Cleveland, Cin., Chic. & St. Louis R'y	.710	.481	.701	.501	.649	.651	.631
8. New York, Chicago & St. Louis R'y	.537	.438	.545	.443	.534	.533	.517
9. New York Central & Hudson River R'y	.699	.518	.701	.514	.733	.726	.668
10. Cumberland Valley R. R.	1.285	1.058	1.206	.931	1.151	1.148	1.137
11. New York, Philadelphia & Norfolk R. R.	1.004	.885	1.057	.843	1.067	1.021	.976
III.							
1. East Tennessee, Virginia & Georgia R'y (2)	.874	.675	.855	.597	.820	.594	
2. Norfolk & Western R. R.	.545	.362	.516	.359	.472	.446	.447
3. Richmond & Danville R. R. (3)	1.355	.929	1.211	.933	1.128		
4. Western & Atlantic R. R. (4)							
5. Central Railroad & Banking Co. of Ga. (5)	1.356	(6) .972	1.246	.963	1.279	1.183	1.197
6. Georgia Railroad & Banking Co. (7)							
7. Atlanta & West Point R. R.	1.639	.931	1.631	1.037	1.743	1.726	1.655
8. Southern R'y						1.047	1.030
9. Western R'y of Ala.	1.699	1.077	1.674	1.057	1.701	1.586	1.505

(1) Financial report filed. Operations included in those of New York Cent. & Hud. Riv. R. R.
(2) Report for 1892 covers period July 1 to June 24. Report for 1893 covers period June 25, 1892, to June 30, 1893. Report for 1895 for month ending July 31, 1894, included in Southern R'y Aug. 1, 1894.
(3) Reorganized as Southern R'y June 18, 1894.
(4) No report filed. Operations included in those of Nashv., Chat. & St. L. R'y.
(5) Report for 1892 covers period Jan. 1 to March 4. Report for 1895 covers four months ending Oct. 31.
(6) As figured by this office. No computation made by road.
(7) Financial report filed. Operations included in those of Georgia R. R.

Interstate Commerce Commission,
Division of Statistics, Oct. 20, 1897.

I, Edward A. Moseley, secretary of the Interstate Commerce Commission, hereby certify that the above is a true and accurate statement from the reports of the carriers named therein for the years 1892 to 1896, inclusive, made to and on file with the Interstate Commerce Commission, this the 20th day of October, 1897.

EDW. A. MOSELY, *Secretary.*

2022

309 And afterwards, to wit, on the 24th day of November, A. D. 1897, a certain stipulation was filed in the clerk's office of said court, which said stipulation is clothed in the words and figures following, to wit:

Stipulation.

(Endorsed:) Filed Nov. 24, 1897. Crawford T. Johnson, Deputy Clerk.

In the Circuit Court of the United States for the Eastern District of Tennessee, at Chattanooga, Tennessee.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE EAST TENNESSEE, VIRGINIA & GEORGIA Railway Co. *et al.*
} In Equity. No. 384.

In this cause, in the matter of the petition filed by the Interstate Commerce Commission and the answers filed thereto by the defendants named therein, it is agreed by the attorney for the Interstate Commerce Commission and the attorney for the defendants, that the following facts are true:

I.

That the capital stock of the Nashville, Chattanooga & St. Louis railway is $10,000,000, and is represented by 100,000 shares.

II.

That the Central Trust Company of New York, as trustees, holds 55,005 shares of the capital stock of the Nashville, Chattanooga & St. Louis railway, in trust for the Louisville & Nashville Railroad Company and that said stock was purchased March 1, 1882.

III.

That the Louisville & Nashville Railroad Company, for the fiscal year, ending June 30, 1896, received as income or dividends on account of the stock of the Nashville, Chattanooga & St. Louis railway, held by the Central Trust Company of New York, for it, as trustee, $220,060.00.

IV.

That the affairs of said Nashville, Chattanooga & St. Louis
310 Railway Company are managed by a board of directors, consisting of fifteen (15) members, who are chosen by the stockholders from their own body and the president of the company is elected by the directors from among their own number; and that in all elections for directors, each share of stock is entitled to one vote.

V.

It is agreed by the attorneys aforesaid, that J. W. Thomas, president; George R. Knox, general freight agent, and W. L. Danley,

general passenger agent of the Nashville, Chattanooga & St. Louis railway, and M. H. Smith, president; S. R. Knott, first vice-president, and Y. van den Berg, traffic manager of the Louisville & Nashville Railroad Company would testify to the following as facts, and that the same may be considered by the court, as if the depositions of said witnesses had been duly taken in this case, and they had testified thereto. All objections to the competency or relevancy of the testimony are reserved as fully as if the depositions of said witnesses had been duly taken.

(*a.*) That the Nashville, Chattanooga & St. Louis railway is a separate and distinct railway corporation; that it is managed and operated separately and apart from the Louisville & Nashville Railroad Company; and is managed and operated by a separate and distinct corps of officers, employés and servants.

(*b.*) That the officers of the Nashville, Chattanooga & St. Louis railway make the rates upon their different lines and branches, according to their own policy and best judgment, and not under the direction, advice or supervision of the officers of the Louisville & Nashville Railroad Company.

(*c.*) That the entire management of the Nashville, Chattanooga & St. Louis railway is under the control of a separate and distinct corps of officers and employés, from the president down, whose salaries are paid by the Nashville, Chattanooga & St. Louis railway.

(*d.*) The Nashville, Chattanooga & St. Louis railway has a separate and distinct board of directors from that of the Louisville & Nashville Railroad Company.

(*e.*) That the Nashville, Chattanooga & St. Louis railway is an active and actual competitor of the Louisville & Nashville railroad, for traffic at all points, where it comes in competition with the Louisville & Nashville railroad.

(*f.*) That the Nashville, Chattanooga & St. Louis railway competes as aggressively with the Louisville & Nashville railroad
311 for all traffic where it comes in competition with said railway company, as it does with any other railroad, or common carrier, for traffic at competitive points.

(*g.*) That the Nashville, Chattanooga & St. Louis railway is an actual and active competitor with the Louisville & Nashville railroad, for all traffics from Boston, New York and other eastern cities, destined to Memphis and to Nashville, Tennessee.

L. A. SHAVER,
Counsel for the Interstate Commerce Commission.
ED. BAXTER,
Counsel for Defendants.

THE BOARD OF TRADE OF CHATTANOOGA
vs.
THE EAST TENNESSEE, VIRGINIA & GEORGIA RAILWAY Company, The Norfolk & Western Railroad Company, The Old Dominion Steamship Company, The Western and Atlantic Railway Company, The Central Railroad & Banking — of Georgia, The Georgia Railroad Company, The Ocean Steamship Company of Savannah, The South Carolina Railway Company, The Clyde Steamship Company, The Cincinnati, New Orleans & Texas Pacific Railway Company, The Baltimore & Ohio Railroad Company, The Central Railroad of New Jersey, The Nashville, Chattanooga & St. Louis Railway Company, The Pennsylvania Railroad Company, The Pennsylvania Company, The New York, Lake Erie & Western Railroad Company, The New York and New England Railroad Company, and The Delaware & Hudson Canal Company.

Testimony Taken at Chattanooga, Tenn., November 12 & 13, 1890.

312 The Interstate Commerce Commission.

CHATTANOOGA, TENN., *November* 12, 1890—10.45 a. m.

THE BOARD OF TRADE OF CHATTANOOGA
vs.
THE EAST TENNESSEE, VIRGINIA & GEORGIA RAILWAY Company *et al.*

Present: Commissioner Morrison, acting chairman: Commissioner Bragg; Commissioner Veazey.

Appearances.

Messrs. G. C. Connor, J. A. Moon, and E. S. Daniels, for complainant.

Mr. W. M. Baxter, for the East Tennessee, Virginia & Georgia Railroad Company.

Mr. A. Pope, for the Norfolk & Western Railroad Company.

Mr. Pope, for the Old Dominion Steamship Company.

J. L. Dickey, general freight agent, for the Western & Atlantic.

A. B. Lawton, Jr. for the Central Railroad & Banking Company of Georgia, and for the Ocean Steamship Company of Savannah.

Messrs. Sheppard & Cist, for the Cincinnati, New Orleans & Texas Pacific Railway Company.

Messrs. Clark & Brown, for the Nashville, Chattanooga & St. Louis Railway Company.

Com'r MORRISON: Gentlemen, you can now proceed.

(Mr. Moon read the petition in this case.)

(Mr. Baxter read the answer of the East Tennessee, Virginia & Georgia Railway Company.)

Mr. POPE: Besides the answer read by Mr. Baxter which was the

technical answer of the Norfolk & Western Railroad Company also, that company considered that it was entirely proper to make further answer which it did in conformity with the rules of the commission; and in making that answer they were entirely willing to disclose the views they entertained in reference to the matter that had been complained of. They did not desire to avail themselves of
313 any technical practice that might obtain before you whether to refuse or to delay the disclosing of their answer until the trial of the case. Therefore, I make this explanation that we made a further answer setting forth the views we entertained. That answer was furnished the complainants in order that they might understand the matter. If you desire it I will read it. Of course the complainants were furnished a copy of it.

Com'r MORRISON: Use your own pleasure about that.

Mr. POPE: I do not desire to take up the time of the commission in reading it unless they desire it.

Com'r BRAGG: I would like to hear it read. I suppose it gives the reasons upon which you rely.

(Mr. Pope reads the separate answer of the Norfolk & Western Railroad Company.)

Com'r MORRISON: Is there any statement to be made in behalf of any other respondent?

Mr. CLARKE: I will read the answer of the Nashville, Chattanooga & St. Louis Railway Company.

Com'r MORRISON: Does it state different reasons from the others?

Mr. CLARKE: Yes, sir.

Com'r MORRISON: Then you can read it.

(The answer referred to was then read by Mr. Clarke.)

Mr. LAWTON: On behalf of the Georgia Central Railroad Company, I would like to state that the answer of that company is very much in the line of that of the East Tennessee, Virginia & Georgia Railway Company, but also, in addition, it sets up the fact that freight destined for Nashville and Memphis via the Georgia Central Railroad Company, that is to say via the Ocean Steamship Company of Savannah and the Georgia Central Railroad Company, from New York does not necessarily go through Chattanooga, the Georgia Central having another line by way of Columbus, Atlanta, and Birmingham which is entirely left off of the map attached to the original complaint in this case, and which I have for the first time seen this morning. That is the only additional fact set out in our answer.

Mr. CIST: The C., N. O. & T. P. occupies the same peculiar position in reference to this particular traffic, and it will be necessary to read only a part of the answer.

(Mr. Cist reads paragraph V of the answer referred to.)

Com'r MORRISON: Is there anything further by way of statement?

Mr. DICKEY: In behalf of the Western & Atlantic I have to say that we join in the rates from the North and West. We have
314 participated in the rates complained of to Nashville and Memphis, but have done it on the idea that they were based

on combinations from Chattanooga and have participated in those rates on the usual basis of divisions. I had not the slightest idea we were violating any laws when we did so.

Com'r MORRISON: There seem to be no further statements. Go on with the testimony.

Mr. CONNOR: May it please the court, in order to shorten the time and not to bring in matter irrelevant, as we understand the respondents now, the first question they make is that we do not participate for business in the same territory as Nashville and Memphis. We submit in a general way our figures on this subject, and if there be any clerical errors we hope the commission will correct them, as we do not wish to present any figures except those which are correct.

I would like to ask if the court is now ready to hear testimony as to whether the cities of Cincinnati, Nashville, Chattanooga and Memphis compete in the same territory, since the question raised is whether they do so compete.

Com'r MORRISON: You may follow your own course in regard to that.

P. W. DRACKETT, a witness on behalf of the complainant, having been duly sworn, testified as follows:

Direct examination.

By Mr. DANIELLS:

Mr. DANIELLS: Where do you reside, Mr. Drackett?

Mr. DRACKETT: In Chattanooga, Tenn.

Mr. DANIELLS: What is your business?

Mr. DRACKETT: Drug business.

Mr. DANIELLS: With what firm are you connected?

Mr. DRACKETT: The firm of Drackett & Company.

Mr. DANIELLS: You may tell the commission in what territory you sell your goods.

Mr. DRACKETT: We sell goods along the Nashville & Chattanooga road; the A. G. S., the C., N. O. & T. P. and the East Tennessee, both South and West.

Mr. DANIELLS: Have you a wholesale store?

Mr. DRACKETT: Yes, sir.

Mr. DANIELLS: You may state whether or not the merchants in your line of business in the cities of Nashville and Memphis compete with you in the same territory.

315 Mr. DRACKETT: Yes, sir; they do.

Mr. DANIELLS: If you know any facts showing a discrimination against Chattanooga and in favor of Nashville and Memphis and other points, please state them to the commission.

Mr. DRACKETT: I can best do that by submitting an illustration. For instance, from Baltimore on the question of epsom salts. We pay the same price in Baltimore for them as Nashville does. The freight from Baltimore to Chattanooga on epsom salts being 57 cents and to Nashville 33 cents, both of us paying the same price of the

salts, 90 cents. The price to this point therefore would be $1.47 and the cost in Nashville is $1.23 per hundred pounds. Now when we go into the Nashville territory to compete with those parties, they are able to sell their salts at a profit and we sell at the same price at a loss. The rate of freight from Chattanooga or Nashville being the same.

Mr. DANIELLS: State whether or not you have computed what per cent. they would make upon those goods even if they sold them at the same price that the article cost you in Chattanooga.

Mr. DRACKETT: Their profit if they sold them at the same price that it costs us to lay them down in Chattanooga would be nearly 15 per cent. The margin in Nashville on the same article would be 24 cents profit if sold at our cost.

Mr. DANIELLS: What I want you to state is exactly what it costs you at Baltimore with the freight added to Chattanooga. Suppose they sold at that price what per cent. profit would they make upon the article?

Mr. DRACKETT: 15 per cent. Another illustration would be sulphur. Sulphur at $1.75 per hundred pounds in New York and freight from New York to this point being 60 cents, would make the cost $2.35 of the goods laid down here. Well, the same goods would cost Nashville $2.11. Therefore in selling at points between Chattanooga and Nashville where the freight to such point is equally the same from Nashville and Chattanooga, we would be compelled to sell at a loss to meet the price of Nashville on the same article.

Mr. DANIELLS: You may state any other fact that you may know.

Mr. DRACKETT: About ten days ago we had a request for quotations on sulphur and salts, the two articles about which I have spoken, at Gadsden, Alabama. We priced to those parties, epsom salts at our cost, $1.47. I made it $1.45, which would have
316 made it two cents loss to us. Nashville offered it at their published price of $1.35 per hundred pounds to the same place. The freight from Nashville to that point was 62 cents, which made the cost to the customer in Gadsden $1.97. Our quotation was $1.45, the freight to Gadsden being 57 cents. Our cost to that party in Gadsden would be $2.02, a loss of five cents had he bought from us, while we were nearer to him than Nashville.

Com'r BRAGG: Now let me ask a question right there please. Over what route from Nashville would that freight be shipped to Gadsden at a rate of five cents more? By what route would it go?

Mr. DRACKETT: We sometimes ship by way of the N. & C. to Chattanooga and other times by way of the L. & N. to Birmingham.

Mr. BRAGG: Is the rate the same either way?

Mr. DRACKETT: I do not know about that. But we more frequently shipped, when I was in Nashville, by way of Chattanooga than by Birmingham.

Mr. DANIELLS: Supposing you sold epsom salts at South Pittsburgh, Tennessee, say at $1.56 and Nashville sold at $1.35, what would be the respective rate of profit in each case?

Mr. DRACKETT: How was that question?

Mr. DANIELLS: Suppose you sold the article of epsom salts at South Pittsburgh at $1.56 and Nashville sold at $1.35, what would be your profit and what would be the profit of the Nashville merchant?

Mr. DRACKETT: The profit on the salts would be the same to both of us. The profit on the epsom salts to Nashville would have been 15 per cent. On epsom salts to us it would have been about 8 per cent. The cost to the customer at South Pittsburgh would have been about the same.

Mr. DANIELLS: You say you travelled at one time for a Nashville house?

Mr. DRACKETT: Yes, sir.

Mr. DANIELLS: During that time did you get any competition with merchants from Chattanooga in your line of business?

Mr. DRACKETT: Yes, sir; quite frequently.

Mr. DANIELLS: Did you have occasion to make rates for customers during that time as against Chattanooga?

Mr. DRACKETT: Quite frequently. Customers would ask me what would be the price of those goods, principally those heavy articles, and I would call their attention to the fact that we could lay the goods down at less than Chattanooga, even though we were further from them—more mileage—than Chattanooga.

317 Mr. DANIELLS: State whether or not you have met that difficulty since you have removed to Chattanooga, from persons from Nashville.

Mr. DRACKETT: In answer to that probably the quotations I have made will explain it. In quotations we have sent out in competition with Nashville prices we have nearly always failed to receive the order and I have heard through our travelling men that Nashville people did get it, although we priced our goods at cost.

Mr. DANIELLS: State whether or not Nashville now is competing with Chattanooga in the same line of business in the same territory.

Mr. DRACKETT: Yes, sir; they are.

Mr. DANIELLS: Locate the territory, please?

Mr. DRACKETT: They send their travelling men over the A. G. S., the East Tennessee as far as Athens, and east to Atlanta, Georgia, and also to Rome, Georgia. Then they go below to Anniston. And they come down to points between here and Nashville over the Nashville & Chattanooga road. They also go over the Memphis & Charleston road the same as we do. On the Memphis road they go beyond Decatur, Birmingham, and Florence. We go to Decatur; we do not go beyond that point.

Mr. DANIELLS: Now, in shipping say from Cincinnati, freight coming through that way, state whether or not you ever had occasion to ship on through Chattanooga to points south, finding that you could get rates as low or lower to points further off.

Mr. DRACKETT: We have an instance of that in a shipment from Cincinnati to point- south on the A. G. S. road, the rate being the same from Cincinnati to that point as to Chattanooga.

Mr. DANIELLS: What point was that?

Mr. DRACKETT: Ragan switch.

Mr. DANIELLS: How far south of Chattanooga?

Mr. DRACKETT: I do not know. It is on the A. G. S. road.

Mr. DANIELLS: That freight came over the Cincinnati Southern to Chattanooga?

Mr. DRACKETT: Yes, sir.

Mr. DANIELLS: Received by the A. G. S.?

Mr. DRACKETT: Yes, sir.

Mr. DANIELLS: State whether or not the rate to Gadsden, Alabama, a point south of here 89 miles, is the same as it is to Chattanooga on the same class of goods—say from Baltimore.

Mr. DRACKETT: I do not know, sir. This much I can say: that we can sell epsom salts at 10 cents a bag on the cost to us and
318 ship it to the customer at Gadsden for less money than to have the goods shipped to us and then have it shipped to the customer from here. Where we sell him shipping from Baltimore direct to Gadsden we would make 10 cents at Gadsden and at the same time would cost the customer less than it would have been if we had shipped from Chattanooga.

Mr. MOON: Do you mean to say that you can ship from Baltimore direct to Gadsden for less than if you stopped the goods in Chattanooga and then sent them to Gadsden?

Mr. BRACKETT: Yes, sir.

Mr. DANIELLS: I believe that is all with this gentleman.

Com'r MORRISON: Gentlemen, do you wish to ask this witness any questions on behalf of the respondents, or any of the——

Mr. BAXTER: I would like to ask a few questions.

Cross-examination:

Mr. BAXTER: Are there any other points, or towns, or cities, with which you compete besides those you mentioned, in this same territory?

Mr. DRACKETT: Yes, sir; a good many others.

Mr. BAXTER: Name some of them.

Mr. DRACKETT: On the A. G. S. road we make all points between here——

Mr. BAXTER: I think you misunderstood my question. You mentioned Memphis, Nashville, and Cincinnati as cities with which you competed in the same territory. Are there any other cities competing with you in the drug business?

Mr. DRACKETT: Of course we meet New York, Baltimore, Boston and Atlanta. Atlanta, though, we do not compete with much; it is not a difficult point to compete with.

Mr. BAXTER: Do you compete with Louisville?

Mr. DRACKETT: Not to any great extent.

Mr. BAXTER: Is the rate to Atlanta *to* same as to Chattanooga?

Mr. DRACKETT: From the East?

Mr. BAXTER: Yes, sir.

Mr. DRACKETT: I do not know, sir. I can soon tell by looking at the tariff.

Mr. BAXTER: Is it the same to Rome as to Chattanooga?

Mr. DRACKETT: Yes, sir; I think it is.

Mr. BAXTER: I understood you to state that you sold goods in Rome?

319 Mr. DRACKETT: No, sir.

Mr. BAXTER: I understood you to answer that you did.

Mr. DRACKETT: I said that the travelling men from Nashville reached as far south as Rome.

Mr. BAXTER: Do you know the local rate from Rome to Gadsden?

Mr. DRACKETT: I do not know sir.

Mr. BAXTER: Do you know whether it is less from Chattanooga than from Rome?

Mr. DRACKETT: I do not know sir.

Mr. BAXTER: Do you know the distance compared with Chattanooga—Chattanooga to Gadsden and Rome to Gadsden?

Mr. DRACKETT: No, sir; I have never looked that up.

Mr. BAXTER: Assuming that the distance is greater from Chattanooga and the rate is the same to Chattanooga and Rome, could you compete with Rome for the sale of goods in Gadsden such as you mentioned?

Mr. DRACKETT: We never have had any competition with Rome.

Mr. BAXTER: Never had any competition with them at all?

Mr. DRACKETT: No, sir.

Mr. BAXTER: Is the rate from New York to Gadsden the same as the rate from New York to Chattanooga?

Mr. DRACKETT: I am not certain about that, sir; I have never looked that up.

Mr. BAXTER: Well, is it not a question more of combination of local rates than anything else?

Mr. DRACKETT: I find that the rate from New York to Gadsden is the same as from New York to Chattanooga.

Mr. BAXTER: Well, then, when you ship goods to Chattanooga, of course you have to rehandle them, and then you have that addition of the local rate; is not the matter you have most to complain of as to whether you can sell at a profit or a loss?

Mr. DRACKETT: I do not know that it is. Since we sell the goods at cost it does not make much difference any way.

Mr. BAXTER: Does it not make the difference of the local rate added?

Mr. DRACKETT: It does to the customer.

Mr. BAXTER: If it makes a difference to him, that limits your trade?

Mr. DRACKETT: I claim that in shipping epsom salts we can ship from Baltimore to Gadsden at 10 cents added to the cost of the goods, and it would cost the customer less at Gadsden than it would if shipped from here.

320 Mr. BAXTER: That is by reason of the local rate from here to Gadsden?

Mr. DRACKETT: It might be in that case; yes, sir.

Mr. BAXTER: Where are your principal purchasing markets for your business?

Mr. DRACKETT: New York, Baltimore, Philadelphia, Brooklyn and Boston.

Mr. BAXTER: Principally in the East?

Mr. DRACKETT: Yes, sir.

Mr. BAXTER: Do you buy any drugs at all from the West?

Mr. DRACKETT: A few patent medicines. They never enter into this matter, as the rate is always paid on those goods.

Mr. BAXTER: Is there any complaint of the adjustment of rates from the West to Chattanooga—through rates?

Mr. BRACKETT: From Nashville to Chattanooga.

Mr. BAXTER: From the West generally?

Mr. DRACKETT: No, sir; we have no shipments from there.

Mr. BAXTER: Any complaint of the adjustment of rates from Chattanooga to the West—through rates?

Mr. DRACKETT: No, sir.

Mr. BAXTER: Then the complaint is of the through rates from the eastern seaboard to Chattanooga, against the East Tennessee road?

Mr. DRACKETT: The rates from New York, Baltimore, Philadelphia and Boston in comparison with rates to Nashville.

Mr. BAXTER: To Chattanooga as compared with Nashville?

Mr. DRACKETT: Yes, sir.

Mr. BAXTER: In your trade in this territory do you compete in any degree with Knoxville in the drug business?

Mr. DRACKETT: Excepting when we go East we do not compete with Knoxville.

Mr. BAXTER: You do compete if you go in that direction?

Mr. DRACKETT: Yes, sir.

Mr. BAXTER: You do not compete with them in Georgia or Alabama?

Mr. DRACKETT: No, sir.

Mr. BAXTER: In Kentucky; do you sell in Kentucky?

Mr. DRACKETT: Yes, sir.

Mr. BAXTER: What is the rate from Chattanooga as compared with the rates from Knoxville, toward Chattanooga from the East?

321 Mr. DRACKETT: In meeting the Knoxville wholesale druggists we find that we are not compelled to sell goods at a loss to compete with them.

Mr. BAXTER: How near to Knoxville can you sell east?

Mr. DRACKETT: On the East Tennessee road we can go as far as Athens and Loudon.

Mr. BAXTER: Athens is about half way?

Mr. DRACKETT: We go beyond that; we go to Loudon.

Mr. BAXTER: That is within thirty miles of Knoxville?

Mr. DRACKETT: Yes, sir.

Mr. BAXTER: Do you know whether the rate from New York to Chattanooga is greater than from New York to Knoxville?

Mr. DRACKETT: I never looked into that.

Mr. POPE: I would like to ask if the rates to Rome or Gadsden—

if the rates to Chattanooga were reduced from eastern cities, assuming that they are now the same, and the rates were reduced likewise to Rome and Gadsden and other points with which he competes, whether his position in the selling of his goods would be improved?

Mr. DRACKETT: Since they are not competitive points and we are not at all bound by them in selling in that territory, it does not make any difference to us whether they be reduced or increased. The greatest difficulty is with Nashville and Memphis people, they being able to lay down goods—and goods are worth what it costs to lay them down—and the cost of their goods is very much less than ours.

Mr. POPE: I submit, Mr. Chairman, that the inquiry of the evidence is that there was a discrimination against Chattanooga by reason of this present adjustment of rates in favor of Nashville and Memphis. I submit that in so far as Nashville is concerned that it is a question of the combination of local rates wholly within the State of Tennessee, added, respectively, to the through rates to Chattanooga or to Nashville, that seems to cause the particular trouble in selling into that territory. I would like, sir, to submit that this is not a question, perhaps, for consideration before your body. The lines participating in the through rates, respectively, to Nashville and Chattanooga, are in no position to express an opinion as to local rates from Nashville and Chattanooga, as added to the through rates, that prevent or enable the Chattanooga merchant to enlarge the area of his territory.

322 Com'r BRAGG: That is matter of argument. You can present that in argument. Just let the facts come along and see what they are.

Com'r MORRISON: Are there any further questions?

Com'r BRAGG: Mr. Drackett, there is one question. You spoke about epsom salts and sulphur. Are there any other articles besides those where you encounter this competition?

Mr. DRACKETT: Yes, sir; there is brimstone, copperas, chalk, cream of tartar, etc. What we call heavy goods.

Com'r BRAGG: Give a list of them and let the stenographer take them down; or you can make a list of them and hand them to the stenographer.

Mr. DRACKETT: All right, sir; I will make the list and hand it to him.

Com'r MORRISON Make it out and give a copy to these other gentlemen, so that they can see it.

FILMORE GIBSON, a witness on behalf of the complainant, having been duly sworn, testified as follows:

Direct examination.

By Mr. DANIELLS:

Mr. DANIELLS: State your name, please.

Mr. GIBSON: Filmore Gibson.

Mr. DANIELLS: Where do you reside?

Mr. GIBSON: In Chattanooga.

Mr. DANIELLS: What is your business?

Mr. GIBSON: In the wholesale crockery business.

Mr. DANIELLS: With what firm are you connected?

Mr. GIBSON: With the Gibson and Loudon Manufacturing Company.

Mr. DANIELLS: State whether or not you sell your goods and compete for business in the same territory with Nashville and Memphis.

Mr. GIBSON: Yes, sir; we do.

Mr. DANIELLS: You can give the commission any fact in your knowledge showing any discrimination against Chattanooga in favor of Nashville and Memphis that you know of.

Mr. GIBSON: There is one class of goods to which I would like to call your attention. It is heavy goods, such as stoneware. It weighs four hundred pounds per hundred gallons. It is purchased north of the Ohio river, and the rate to Chattanooga is 52 cents and to Nashville 27 cents. The ware costs at the factory——

323 Com'r MORRISON: From what points?

Mr. GIBSON: From Zanesville, Ohio. That ware costs $4.00 per hundred gallons at the factory. A rate of 52 cents to Chattanooga would make it cost a little over six cents a gallon. The same ware laid down in Nashville would cost about five cents. That would permit Nashville to make a little over twenty per cent.

Then take the question of shipping cheap pottery from Trenton, N. J., which point, I think, enjoys the same rate as New York, Philadelphia and Baltimore, or a little less. A package of 1,000 pounds at Trenton would be worth $40.00. The rate to this point would be 65 cents, and I forget the classification to Nashville, but I think the rate is 48 cents. The value of this difference in rate to the Nashville man would be from three to five per cent., taking it for granted that the cost would be the same to the Chattanooga merchant as it would be to the Nashville merchant.

And the same classification exist- rigit through on all very bulky goods that are of small value, such as tinware, etc. Where the value is small and the packages large.

Mr. DANIELLS: Take tin plate shipped from New York to Chattanooga and to Nashville. what is the rate to Chattanooga, and what to Nashville?

Mr. GIBSON: I am not prepared to say positively what the rate to Nashville is. The last comparison I made showed that the rate was forty-five cents to Nashville and sixty-three cents to this point.

Com'r VEAZEY: Would that come over the same line of road to the two places?

Mr. GIBSON: I think it would, I have known that to be the case.

Com'r VEAZEY: Of course, there are different lines from New York to the two points that they could go over?

Mr. GIBSON: Yes, sir; there are several lines. There is only one line by which they could reach Nashville.

Mr. DANIELLS: To what line do you have reference?

Mr. GIBSON: To the East Tennessee.

Mr. CONNOR: If they came by several routes, would it be the same rate?

Mr. GIBSON: I understand that the rate is the same by all of the lines to Nashville. That is the case here.

Mr. DANIELLS: Can you tell what the rate is on glassware from Pittsburg to Nashville and Chattanooga over the same route?

324 Mr. GIBSON: We presume that the goods come over the same route. We pay ninety-two cents and Nashville pays fifty-two cents from Pittsburg.

Mr. DANIELLS: State whether or not you ever shipped goods through Chattanooga, say to Nashville, and had them returned here because you could get a better rate that way.

Mr. GIBSON: Yes, sir. We did on one occasion ship a car-load of very heavy iron goods from Jersey City that way. We bought them f. o. b. at Jersey City, and asked the manufacturer to get us the best rates he could. He telegraphed us that they had shipped the goods through to Nashville, and that they would return from Nashville here. That was done; they went through here and were returned to this point on the local rate from Nashville to Chattanooga. That was a saving to our concern in the neighborhood of $60 00 on one car.

Mr. DANIELLS: Well, now, on what route did that go? State whether or not that went through here in the first place.

Mr. GIBSON: My understanding is that they did go through here and were returned right back to Chattanooga.

Mr. DANIELLS: That saved you sixty dollars on the one car?

Mr. GIBSON: About that.

Mr. DANIELLS: Now if there are any other instances you can give the commission showing these discriminations, please do so.

Mr. GIBSON: I do not know any other instances of incoming freight.

Mr. DANIELLS: Tell the commission all you know on this subject.

Mr. GIBSON: There is another matter about which I would like to speak in regard to goods from Cincinnati and Louisville to points south of us. For instance, on stoves the same rate is made from Louisville to Guntersville, which I understand is from sixty-five to seventy miles south of us, that we have. They can get the same rate by shipping through Chattanooga to Guntersville. The rate from Louisville and Cincinnati is the same.

Mr. CLARKE: I ask leave to suggest for the purpose of saving time if the complaint is on rates from western points, and if it is not from eastern points. There is no use in taking up the time of the commission in hearing about rates from the West and North.

Mr. POPE: The complaint is from eastern seaboard cities and those cities are named. They are New York, Philadelphia,

325 Baltimore and Boston. There has been evidence in reference to rates from the West. There has been evidence in regard to rates from Zanesville, Ohio.

Mr. MOON: I think, if your honors please, it won't do any harm to give that.

Com'r MORRISON: It would be very convenient if everybody would agree that the testimony as far as applicable should be used. We sometimes do that. But if these gentlemen object, of course, it cannot be done.

Mr. CLARKE: There are some of us here who do not care to hear the other case. We desire to hear the petitions separately. Much the greater number of us are in that fix.

Mr. MOON: I suggest to your honors that the gentlemen need not complain of it if it assists the commission in getting all the facts.

Mr. CLARKE: These specific cities are named in this complaint.

Com'r MORRISON: We understand that, but we are very technical; we scatter a good deal. Have the case tried as it is presented.

Mr. DANIELLS: I believe that is all, Mr. Gibson.

Cross-examination.

By Mr. BAXTER:

Mr. BAXTER: Mr. Gibson, the first part of your testimony related to heavy earthenware. Is not that from the western part of the country, and not from New York, Baltimore and Philadelphia?

Mr. GIBSON: Yes, sir; that was from Zanesville, Ohio.

Mr. BAXTER: And a certain part related to rates from Pittsburg. That is not what is complained of here—the rate from Pittsburg to Chattanooga?

Mr. GIBSON: I do not know what the allegations were when the bill was filed by this body.

Mr. BAXTER: And another portion of your testimony was in reference to rates from the West; another portion in relation to rates from Liverpool to Guntersville. That has no bearing on the rates from Baltimore, Philadelphia and New York.

Mr. GIBSON: I gave that evidence in response to questions asking for it.

Mr. BAXTER: Do you handle pottery in your business from the East, from any of the eastern cities named?

Mr. GIBSON: This is one of the points the eastern men reach.

Mr. BAXTER: You referred to shipment you had made direct to Nashville and then returned to Chattanooga. How long since was that?

326 Mr. GIBSON: That was about a year ago; more than that, a year and a half.

Mr. BAXTER: Do you know whether or not the combination of the through from New York to Nashville and then the local rate from Nashville to Chattanooga could make any such difference as you speak of?

Mr. GIBSON: I did not know of that shipment until that was done.

Mr. BAXTER: You took the through rate to Nashville and then the local rate to Chattanooga?

Mr. GIBSON: I made no effort to do so.

Mr. BAXTER: You understood that you got your goods for sixty dollars less that was all is it? Do you know of your own knovledge that they went through Chattanooga?

Mr. GIBSON: I have stated that I did not.

Mr. BAXTER: You stated that the rate to Chattanooga upon a certain article was sixty-three cents and to Nashville forty-two cents?

Mr. GIBSON: About forty-two, I do not know what the classification is exactly.

Mr. BAXTER: Is it not a fact that the rate to Nashville is forty-two cents and to Chattanooga forty-nine?

Mr. GIBSON: I think not. Not unless it has been very recently changed.

Mr. BAXTER: You are stating it from recollection and not from the tariff sheets?

Mr. GIBSON: I have not examined the tariff sheets recently.

Mr. POPE: I would like to ask, do you deal in stoves, deal in them or manufacture them?

Mr. GIBSON: I do both.

Mr. POPE: Suppose the condition of rates was equal on stoves from eastern cities to the West, that is, the rate no higher on stoves from eastern seaboard cities to Chattanooga than to western points. Would it be to your interest to buy stoves in eastern markets?

Mr. GIBSON: Of course, that would be a question of the class of goods.

Mr. POPE: The average class of goods that is consumed in this market.

Mr. GIBSON: The class of goods consumed in this market is not made in the East.

Mr. CIST: I would like to ask the witness, where do you meet the Memphis competition about which you speak? All the evidence you have given relates to Nashville competition.

Mr. GIBSON: We go as far west as Decatur, usually

327 Mr. CIST: Do you then meet there Memphis merchants selling against you?

Mr. GIBSON: Yes, sir; they are selling within twenty-five miles of this city against us.

Mr. DANIELLS: That is all, Mr. Gibson.

J. P. SMART, witness on behalf of the complainant, having been duly sworn, testified as follows:

Direct examination.

By Mr. DANIELLS:

Mr. DANIELLS: Please state your name.

Mr. SMART: J. P. Smart.

Mr. DANIELLS: Where do you reside and what is your business?

Mr. SMART: I reside in Chattanooga, and my business is a boot and shoe merchant.

Mr. DANIELLS: State whether or not you are engaged both in the wholesale and retail trade.

Mr. SMART: Yes, sir; we are.

Mr. DANIELLS: Where do you buy most of your goods for your wholesale trade?

Mr. SMART: In Boston and around Boston, in its vicinity in Massachusetts.

Mr. DANIELLS: State whether or not you sell goods and compete for business in the same territory with Nashville and Memphis.

Mr. SMART: A portion of the same territory; yes, sir.

Mr. DANIELLS: Now, you may give the commission any facts within your knowledge tending to show any discrimination against Chattanooga and in favor of Nashville and Memphis merchants.

Mr. SMART: Well, I have not investigated the subject. I only know that there is a difference in rates. I understand that Nashville has a tariff less than it is to Chattanooga by perhaps twenty-three or twenty-four cents, and to Memphis it is twelve to thirteen cents less. I have been competing with them in the same territory and I understand there is that much difference in the tariffs.

Mr. DANIELLS: State whether or not it materially affects your trade in the territory where they compete?

Mr. SMART: Yes, sir. It gives them that much advantage.

Mr. DANIELLS: State whether or not you ever had occasion
328 to make through shipments, say from Boston, to points south that would give you better rates than you could get to Chattanooga.

Mr. SMART: Well, we have shipped some goods direct to points south of us where the parties would get the goods at that point at the through rate, instead of having the rate made from here, an additional rate from here, there.

Mr. DANIELLS: State whether you got the same rate there as to Chattanooga.

Mr. SMART: My understanding is that the rate is the same.

Mr. DANIELLS: Can you name any points to which you shipped?

Mr. SMART: The point to which we shipped them was Attalla, Ala.

Mr. DANIELLS: How far south?

Mr. SMART: Eighty miles south of us.

Mr. DANIELLS: State whether or not you got the same rate to Attalla as to Chattanooga.

Mr. SMART: I do not know as to how that is. I think it is. I think the rate to Gadsden is the same, and Attalia is only a few miles from Gadsden.

Mr. DANIELLS: Over what line of road do you ship mostly?

Mr. SMART: We have been shipping recently mostly by the Clyde line by way of Charleston.

Mr. DANIELLS: You ship over the East Tennessee, do you not?

Mr. SMART: Yes, sir; we ship a great many goods by that line but the bulk of our shipments have been coming by the Clyde line

Mr. DANIELLS: Where do you purchase most of goods for the retail trade?

Mr. SMART: In New York, Philadelphia, Cincinnati and Rochester, N. Y., and some in Baltimore.

Mr. DANIELLS: That is all for the present.

Cross-examination:

Mr. POPE: Do you deal in boots and shoes, Mr. Smart?

Mr. SMART: Yes, sir.

Mr. POPE: Your shipments are from Boston direct, I suppose?

Mr. SMART: Yes, sir.

Mr. POPE: What route do you reach by the Clyde line from Boston?

Mr. SMART: I will make an explanation of that; my partner has been attending to the wholesale business more than I have.

329 There are two lines of business, the wholesale and retail. I know that our shipments come by Charleston. I say the Clyde line because I had an impression that the Clyde line came to Charleston.

Mr. POPE: You buy by the quantity, I suppose? What is the average weight of a case of shoes, such as you handle?

Mr. SMART: I could not say just what the average is but I have an impression that it — about seventy pounds.

Mr. POPE: Is it more than eighty pounds?

Mr. SMART: I do not think so.

Mr. POPE: And the rate is one dollar and fourteen cents to Chattanooga that you pay?

Mr. SMART: Yes, sir.

Mr. POPE: And it is ninety-one cents to Nashville?

Mr. SMART: Yes, sir.

Mr. POPE: A difference of twenty-three cents. On an average of eighty pounds to the case that would be about ninety-one cents to Chattanooga, and the same calculation would make it about seventy-three cents to the Nashville trade per case. How many pairs of shoes are there to the case, sixty or fifty?

Mr. SMART: It used to be sixty, but they are making them less now; they do not average sixty. We have a great many of thirty-six, twenty-four and twelve pair cases. It used to be that there were sixty pairs to the case.

Mr. POPE: There would be a difference of eighteen cents a case; that would be three-tenths of a cent per pair. Is that enough, sir, to affect or deprive you of the territory that is open to Nashville by the lower rate?

Mr. SMART: Yes, sir, I think so; but I think the argument is worth — than the actual fact.

Mr. POPE: I am only trying to get at the facts as damaging your trade.

Mr. SMART: I suppose that is comparatively correct then.

Mr. DANIELLS: You do make shipments over the East Tennessee up to this time, do you not?

Mr. SMART: Oh, yes, a portion of our goods come that way all the time.

Mr. BAXTER: You say that your shipments are by way of Charleston and you assume that the Clyde line brings them to Charleston. Do you know whether or not there is a direct steamer line from Boston to Charleston?

Mr. SMART: My impression is that those steamers come from New York; the goods I think first come from Boston to New York, and then from New York to Charleston.

330 Mr. BAXTER: And break the loads at New York and reload to Chattanooga?

Mr. SMART: I think so. They may be brought by railroad to New York.

Mr. BAXTER: And then break bulk at New York and load it into the steamer and brought to Charleston?

Mr. SMART: Yes, sir.

Mr. BAXTER: Assuming that the rate from Boston to Chattanooga is one dollar and fourteen cents and to Nashville ninety-one cents; do you know any reason why it is you ship in the way you spoke of? Did you get any less rate than a dollar and fourteen to Chattanooga?

Mr. SMART: The reason we ship by that line is that they make the best time.

Mr. BAXTER: It is a matter of time then?

Mr. SMART: Yes, sir. But we ship more or less goods by the railroads all the time.

Mr. BAXTER: It has not been a matter of rate then?

Mr. SMART: No, a matter of time. They make better time than we have ever gotten by any line.

Mr. DANIELLS: Can you arrive at any conclusion as to what you lose per year by reason of this discrimination?

Mr. SMART: No, sir; I have never made any calculation about that.

Mr. DANIELLS: Could you approximate it?

Mr. SMART: Well, I suppose it would amount to something between $500.00 and *a* $1,000.00 in freight every year.

Mr. CLARKE: You say that these drummers from Nashville go around and blow about the rates to Nashville. Now, if you get into a territory of a city which happened to have a little higher rate than you, then your drummers would use the same racket, would not they?

Mr. SMART: Yes, sir; the same thing.

Mr. DANIELLS: That is all, Mr. Smart.

Com'r MORRISON: Call another gentleman.

D. B. LOVEMAN, a witness on behalf of the complainant, having been duly sworn, testified as follows:

By Mr. DANIELLS:

Mr. DANIELLS: Mr. Loveman, in what business are you engaged?

Mr. LOVEMAN: In the dry goods business.

Mr. DANIELLS: Wholesale and retail?

Mr. LOVEMAN: Mostly retail.

331 Mr. DANIELLS: In what territory do you sell?

Mr. LOVEMAN: In all the Southern States.

Mr. DANIELLS: Do the Nashville merchants and Memphis merchants compete with you in your territory?

Mr. LOVEMAN: Yes, sir.

Mr. DANIELLS: In what territory do they compete?

Mr. LOVEMAN: Well they come in in the middle and western part of Tennessee, north Georgia, Alabama and Mississippi.

Mr. DANIELLS: Is there any discrimination in rates against Chattanooga in favor of Nashville and Memphis from eastern seaboard points?

Mr. LOVEMAN: Yes, sir.

Mr. DANIELLS: Now state to the commission any facts you know in regard to discrimination against Chattanooga merchants.

Mr. LOVEMAN: Well, we understand that the Nashville rate on first-class freight is ninety-one cents whereas ours is $1.14. There is a difference of about ten or eleven cents on each of the other classes.

Mr. DANIELLS: That is upon goods brought from the eastern seaboard cities to Chattanooga and Nashville over the same roads?

Mr. LOVEMAN: Yes, sir.

Mr. DANIELLS: Well, if there is any instance in any particular line of your trade you may illustrate it to the commission.

Mr. LOVEMAN: Well, I am a large buyer of goods of what is called first-class freight which pays $1.14 to Chattanooga and ninety-one cents to Nashville which makes it nearly twenty-five per cent. more expense to carry on my business as regard freight than it costs the Nashville merchants. I frequently fill orders for Nashville and Atlanta merchants, and have the goods shipped to Nashville over the East Tennessee road. I frequently get the rate of freight for the three points and invariably get a lower rate to Nashville than to Chattanooga over the same line of road. Whenever I am in New York friends in Nashville send orders to me and get me to ship the goods.

Mr. DANIELLS: Can you state about how much trade is damaged by reason of this discrimination?

Mr. LOVEMAN: Taking the same line of business, say that the Nashville man does the same amount of business that I do, then he would have the advantage of me from $1,500.00 to $2,000.00 in the matter of freight alone. I pay about $7,000.00 in freight and the Nashville man would have to pay from 25 to 30 per cent. less on the same line of goods.

Mr. DANIELLS: That is all.

332 Cross-examination.

By BAXTER:

Mr. BAXTER: What portion of your business is wholesale?

Mr. LOVEMAN: A very small portion.

Mr. BAXTER: Practically all retail?

Mr. LOVEMAN: The largest portion is retail.

Mr. BAXTER: What character of business are you engaged in generally?

Mr. LOVEMAN: I do not know that I understand the question.

Mr. BAXTER: You know what I mean. What kind of business do you do?

Mr. LOVEMAN: It is dry goods, carpets, and notions; that is all covered by the term "dry goods."

Mr. BAXTER: Do you know what proportion of the Nashville tonnage from those eastern seaboard points is done over the East Tennessee, Virginia and Georgia Company?

Mr. LOVEMAN: No, sir; I do not know what proportion comes over that road. I know that I have shipped to Nashville over the East Tennessee road and my friends ship to Nashville over the East Tennessee.

Mr. BAXTER: You do not know what portion of the goods come via Cincinnati and the river—coming this way?

Mr. LOVEMAN: I know the rate is the same and I know the goods are shipped over the East Tennessee through Chattanooga to Nashville.

Mr. BAXTER: What quantity or to what extent you have no idea?

Mr. LOVEMAN: I do not know anything about the railroad business. I would say, if you will permit me, that it is the same over all routes. If a shipper desires to ship all his goods over the East Tennessee he can do so.

Mr. BAXTER: To Nashville?

Mr. LOVEMAN: Yes, sir; if I were living in Nashville I could ship by Savannah at the same rate as by the New York Central.

Mr. POPE: Mr. Loveman, about what amount of your business is in what is called the "cotton piece goods;" the various articles denominated in the special list sheet? About what is the amount of the business?

Mr. LOVEMAN: It is very difficult to give that, Mr. Pope.

Mr. POPE: Is it a large or small proportion?

333 Mr. LOVEMAN: Well, in the retail department it is small; a wholesale merchant would have a large proportion.

Mr. POPE: Do you not do a package business?

Mr. LOVEMAN: Not much.

Mr. POPE: Your rate is a dollar and fourteen cents on first class goods against ninety-one cents to Nashville. But if you are handling cotton piece contained in that list, all the fabrics made of cotton called "cotton piece goods," containing either a large amount of cotton or made wholly of cotton, shipped in the original packages, which comes from the eastern seaboard, that is in the fifth class with the Southern Railway and Steamship Association classification which is used into Chattanooga, and the rate is sixty cents, is it not?

Mr. LOVEMAN: Sixty or sixty-eight.

Mr. POPE: Is not fifth class sixty cents?

Mr. LOVEMAN: Yes, sir.

Mr. POPE: Now, when this business goes to Nashville, these same cotton piece goods, from eastern cities, a different classification is used, that is the trunk-line classification, the official classification, and cotton piece goods under that classification is third class and the rate is sixty cents. I simply have wanted to show that the rate on certain cotton piece goods was the same to Chattanooga as to Nashville.

Mr. MOON: Is the attorney testifying?

Mr. LOVEMAN: The goods that I handle are largely first-class.

Mr. CIST: Following about the same line I would like to ask you a question or two. In retail business you do not meet the competition of Nashville merchants of course; it is only in your wholesale business that you are affected by the Nashville business; is not that so?

Mr. LOVEMAN: In the retail business the matter of freight can only be figured in the general results. For instance, I have figured up my freight account — I find that I am at a disadvantage as compared with the Nashville and Memphis merchants on account of the difference in rates.

Mr. CIST: Simply on account of the rates?

Mr. LOVEMAN: That is all.

Mr. CIST: You do not find that the Nashville retail merchants compete with you for your retail trade?

Mr. LOVEMAN: Yes, sir; they compete for our retail trade. We do a large retail business all over this country. The prices are practically the same all over this territory. It only enters into the profits.

Mr. CIST: It is not felt, then, in the wholesale business?

334 Mr. LOVEMAN: It would be felt more in the wholesale business.

Mr. CIST: Is it not a fact that the greater portion of your wholesale business is done in what is known as these "cotton piece goods"?

Mr. LOVEMAN: Not the greater portion. I should judge one-third of the merchandise of the wholesale merchant would be classified as cotton piece goods.

Mr. CIST: Well, just in the same way approximate the other two-thirds.

Mr. LOVEMAN: One-third would consist of fine goods, such as notions, it would pay $1.14; the other one-third would be southern factory goods.

Mr. CIST: So that of the two-thirds that do enter into this contest, one of the thirds, that is, one-half of it, takes a lower rate than to Nashville.

Mr. LOVEMAN: Of the goods that come from the East one-half would be cotton piece goods and the other half first-class goods. My business is very little in the wholesale line.

Mr. MOON: Your profits are affected both in the retail and in the wholesale business, are they not?

Mr. LOVEMAN: Yes, sir; because of the increase of the cost of conducting our business.

Mr. MOON: About what amount on your wholesale business?

Mr. LOVEMAN: From $1,500.00 to $2,000.00.

Mr. CLARKE: You arrive at that by taking the difference in the freight rate to Nashville and to this point?

Mr. LOVEMAN: Yes, sir.

Mr. CLARKE: Then, if Cincinnati happened to have a rate that was higher than yours, then to the extent they came into competition with you they would make a less profit?

Mr. LOVEMAN: I suppose so.

Com'r MORRISON: Judge Moon, you inquired about taking a recess, I believe?

Mr. MOON: Any time would suit me that is convenient for the commission.

Com'r MORRISON: We will take a recess until half past two.

After recess.

After the expiration of the recess (2.30 p. m.) the commission resumed its session.

Com'r MORRISON: Gentlemen, are you ready to proceed?

Mr. DANIELLS: Yes, sir; we are ready.

335 J. M. TRIGG, a witness on behalf of the complainant, having been duly sworn, testified as follows:

Mr. DANIELLS: Do you live in Chattanooga?

Mr. TRIGG: Yes, sir.

Mr. DANIELLS: In what line of business are you engaged?

Mr. TRIGG: In the wholesale grocery business.

Mr. DANIELLS: State whether or not you sell you- goods in the same territory that Nashville and Memphis merchants do.

Mr. TRIGG: Yes, sir; we compete for trade in the same territory. We sell goods in the Memphis territory and in the Nashville territory, but we are restricted to a certain extent because they can obtain better rates there. On heavy groceries it is impossible to sell in the Memphis territory, but on the finer goods, where we have better profits, we can get in occasionally.

Mr. DANIELLS: Without being asked questions, just go on, please, and state such facts that you know which will be of benefit to the complainant.

Mr. TRIGG: Last year our traveling agent was in Adairsville. We were trying to sell canned goods there, and they were offering them from Memphis cheaper than we could lay them down in Chattanooga. The rate from Baltimore to Memphis on canned goods is much better than to Chattanooga. The rate to Memphis is thirty-five cents, while the same class of goods to Chattanooga is seventy cents, which is double. That excluded us from that territory. Guntersville we usually control, as we consider that in our territory. On sugars and goods of that kind the difference in the rates amounts to a profit. For instance, we pay forty-nine cents, while Nashville pays thirty-one; the difference is a profit.

Mr. DANIELLS: Over what route do you ship?

Mr. TRIGG: We ship the majority of our goods by way of the Ocean Steamship Company of Savannah.

Mr. DANIELLS: Do you ship any by the East Tennessee?

Mr. TRIGG: Yes, sir.

Mr. DANIELLS: To any considerable extent?

Mr. TRIGG: Yes, sir; we ship a good many goods over the East Tennessee, but the majority comes by the ocean steamship companies.

Mr. DANIELLS: How does it go to Memphis?

Mr. TRIGG: My impression is that it goes over the East Tennessee.

Mr. DANIELLS: From here to Memphis?

Mr. TRIGG: I do not exactly understand.

336 Mr. CONNOR: How does freight go from Chattanooga to Memphis? Over what road?

Mr. TRIGG: Over the Memphis and Charleston.

Mr. DANIELLS: Do you buy goods also at Boston and New York?

Mr. TRIGG: Yes, sir.

Mr. DANIELLS: And over what line do you ship from there?

Mr. TRIGG: Sometimes by the East Tennessee and sometimes by the Ocean Steamship Company; occasionally over the Baltimore and Ohio to Cincinnati, and from there here.

Mr. DANIELLS: Have you made any computation of the difference it would amount to yearly in the amount of freight you pay here as against what it would be, if anything, at the Nashville rate, as if you were doing business in Nashville and did the same business yearly as you do here?

Mr. TRIGG: No, sir; I have never figured on the cost, but I could tell by our sales. It amounts to considerable.

Mr. DANIELLS: State whether it is considerable or not.

Mr. TRIGG: Yes, sir; it is considerable.

Mr. DANIELLS: State whether or not this discrimination against you materially affects your business and your profits.

Mr. TRIGG: Yes, sir; it does. We have to compete with Nashville and Memphis in that territory, and they come into our territory and compete for our trade. What I mean by our territory is the towns adjacent to Chattanooga, and Memphis territory is found closer to that city. In other words, they can sell goods at our door and they exclude us to a certain extent.

Mr. DANIELLS: How far along the Memphis and Charleston do you sell?

Mr. TRIGG: As far along as Florence, Decatur, South Pittsburg, all on the Nashville branch.

Mr. DANIELLS: Can you realize as large a profit on your goods as the Memphis and Nashville merchants do in those places?

Mr. TRIGG: At Florence we are almost excluded on sugar and that class of goods. We sell tobacco and that class of goods by selling them cheaper and taking less profit than they do at Nashville. This is the only way we can sell them.

Mr. DANIELLS: As a matter of fact, part of your trade you can not carry on at all by reason of the discrimination?

337 Mr. TRIGG: No, sir; not if the merchants are well posted.

Mr. DANIELLS: If you know anything further you may state it to the commission.

Mr. TRIGG: I know nothing further.

Cross-examination:

Mr. BAXTER: What articles are usually denominated as staple groceries?

Mr. TRIGG: Sugar, coffee, rice, tobacco and articles of that kind.

Mr. BAXTER: Where do you make those purchases usually for your house?

Mr. TRIGG: We buy coffee from New York usually; sugar we buy from Philadelphia and New Orleans.

Mr. BAXTER: Do you buy any coffee in New Orleans?

Mr. TRIGG: No, sir; we very rarely ever buy any there.

Mr. BAXTER: Is it not a fact that staple groceries are sold on a narrower margin than other groceries?

Mr. TRIGG: Yes, sir.

Mr. BAXTER: By everybody?

Mr. TRIGG: Yes, sir.

Mr. BAXTER: Everywhere?

Mr. TRIGG: Yes, sir.

Mr. BAXTER: Do you not purchase your sugar and molasses, staple groceries of that kind, entirely from the southern territory, from New Orleans?

Mr. TRIGG: No, sir; I do not.

—. BAXTER: About what proportion do you purchase South?

Mr. TRIGG: Sugars, during the last year or two, the largest have been bought in New Orleans. We buy very few syrups in New Orleans.

Mr. BAXTER: Do you know what the rate from New Orleans to Chattanooga is on sugar and molasses?

Mr. TRIGG: Nineteen cents, I think, on sugar.

Mr. BAXTER: What to Nashville?

Mr. TRIGG: I do not know.

Mr. BAXTER: Is it higher or lower?

Mr. TRIGG: I really do not know, sir.

Mr. BAXTER: Do you know what the rate is from Boston to Chattanooga upon sugar and molasses?

Mr. TRIGG: From Philadelphia—we do not buy any in Boston. Forty-six cents from Philadelphia I think is the rate. Forty-nine cents from New York and forty-six cents from Philadelphia.

338 Mr. BAXTER: Mr. Trigg, are you sufficiently informed to make an estimate or statement as to what proportion of the entire business of Chattanooga is done from the East or from other portions of the country into Chattanooga and out of it?

Mr. TRIGG: No, sir; I am not.

—. BAXTER: Do you know what proportion of it is done with reference to the grocery trade in the line in which you deal?

Mr. TRIGG: Well, strictly groceries, leaving out flour and meat, it would be over half, I should think.

Mr. BAXTER: Well include flour and meat; the entire grocery business; what proportion is done from the East as compared with other portions of the country?

Mr. TRIGG: I could not say in regard to that exactly.

Mr. BAXTER: I mean in regard to your own business?

Mr. TRIGG: Well, I suppose about one-third.

Mr. BAXTER: One-third from the East and two-thirds from other portions of the country. Well, is there any complaint to make, so far as you know, of the rates from the portion of the country from which two-thirds of the business is done into Chattanooga, is there any complaint at all?

Mr. TRIGG: Yes, sir.

Mr. BAXTER: State that then.

Mr. TRIGG: Well, take freight rates from the West. We have our flour shipped to us from Princeton, Indiana, and we pay thirty-eight cents for it. Now, every little station gets a rate of thirty-nine cents from the same point, one cent higher than we pay. We ship right through here and pay thirty-nine cents to Rising Fawn, while we pay thirty-eight cents to Chattanooga.

Mr. BAXTER: Rising Fawn is further from Indiana than Chattanooga, is it not?

Mr. TRIGG: Yes, sir; it works against us in both ways. We pay a higher rate coming in than our competitors and they get a cheaper rate to almost all points.

Mr. BAXTER: Please explain that statement by an example of paying higher rates in and higher rates out.

Mr. TRIGG: We pay higher rates from the East to Chattanooga and then to the points that we ship to they get better rates than we do. Thus it restricts us from selling goods in our territory because they have a cheaper rate of freight. For instance if we shipped a car-load of flour to Chattanooga it would cost us thirty-eight cents and that would restrict us from shipping out of this place as these smaller places would get the same rate there except one cent.

Mr. BAXTER: And then your statement of paying higher
339 rates in and out is in reference to that state of facts, is it?

Mr. TRIGG: Yes, sir.

Mr. BAXTER: I have nothing further.

Mr. CONNOR: Please tell the commission what would be the rate you would have to pay to Fort Payne.

Mr. TRIGG: I think it is twelve cents a hundred.

Mr. CONNOR: Then flour would cost the customer if it came here and was reshipped fifty cents a hundred?

Mr. TRIGG: Fifty cents a hundred.

Mr. CONNOR: But if they got it direct from Princeton it would only cost them thirty-nine cents.

Mr. TRIGG: Thirty-nine cents. The only way we can sell is to ship it to them and have the bill sent to us.

Mr. BAXTER: Would not that same condition of things exist at Nashville? Would it not be the through rate plus the local?

Mr. TRIGG: I understand they have reshipping facilities there.

Mr. BAXTER: Do you know that of your own knowledge?

Mr. TRIGG: No, sir; I do not.

Mr. CLARKE: You speak now of the rate down here in Alabama. You say the rate to this point is thirty-eight cents and down there is thirty-nine; and that if you ship direct to the place where you sell, it is only one cent more. The complaint you make is that the roads do not charge higher enough down there.

Mr. TRIGG: We have no rebilling facilities, and a great many towns do have rebilling facilities. For instance, they ship a carload of goods to town and then they can reship it at the same rate, while we are restricted, not having that privilege.

Mr. CLARKE: What *do you* complain of then is that you cannot ship to Rising Fawn because you have to ship here and then pay the local rate to that point?

Mr. TRIGG: It restricts us from doing business simply because we pay a higher and other places have a cheaper rate than we have.

Mr. CLARKE: I believe we have gotten off on western freight again.

Com'r MORRISON: That was in response to a question asked by Mr. Baxter.

Mr. BAXTER: That same condition of affairs would apply to Birmingham if you wanted to sell there; the rate to Chattanooga and then from Chattanooga to Birmingham would prevent you from selling in Birmingham?

Mr. TRIGG: I suppose so.

340 Mr. POPE: When you thus shipped direct from Princeton to Rising Fawn is it not a sale and does not your house get a commission out of that?

Mr. TRIGG: Yes, sir. But the point is this: sometimes we can do that but that gives them an advantage over us. If they are well informed they are going to buy direct. It restricts our business right here in our own territory.

Mr. BAXTER: Then the manufacturing man becomes a competitor with you, the middle man?

Mr. TRIGG: Yes, sir, that is the trouble.

Com'r BRAGG: Do we understand you to say that Memphis and Nashville have what we call rebilling privileges?

Mr. TRIGG: I do not know positively that they have now; they did have until recently.

Com'r BRAGG: By recently, how long ago do you mean that was?

Mr. TRIGG: I think it has been within the last six months.

Com'r BRAGG: Do you understand that it applies to anything else except flour?

Mr. TRIGG: It may apply only to western goods.

Com'r BRAGG: That does not apply to any of the goods that you get from eastern points?

Mr. TRIGG: I think not, sir.

Mr. DANIELLS: It is a fact that in shipping these goods from New York and Boston they ship them right through here to Nashville at a less rate than to Chattanooga?

Mr. TRIGG: I believe so.

Mr. DANIELLS: That is all.

Mr. DANIELLS: Mr. Gibson, we want to recall you for a moment.

FILMORE GIBSON, a witness on behalf of the complainant, was recalled and testified as follows:

Mr. DANIELLS: Have you made any computation as to the amount of freight you pay yearly?

Mr. GIBSON: Yes, sir.

Mr. DANIELLS: Supposing now that you were doing business in Nashville and received the same amount of goods that you received here in your business, and paid the Nashville rates instead of the Chattanooga rates what would be the difference in the amount of freight charges paid in a year?

Mr. GIBSON: There would be a difference of about $3,500.00.

Mr. DANIELLS: Why is that?

341 Mr. GIBSON: Because of the increased amount charged Chattanooga for the same class of goods.

Mr. DANIELLS: Discrimination against Chattanooga in favor of Nashville?

Mr. GIBSON: Yes, sir.

Mr. DANIELLS: You may have the witness.

Mr. CIST: I would like to ask a question or two. Mr. Gibson, you are a manufacturer of stoves, are you not?

Mr. GIBSON: Yes, sir.

Mr. CIST: That constitutes the principal part of your business?

Mr. GIBSON: No, sir.

Mr. CIST: What does?

Mr. GIBSON: We manufacture goods to some extent and have a wholesale house of crockery, glassware, and a general line of toys, etc.

Mr. CIST: Do I understand that that is your business?

Mr. GIBSON: The Gibson Manufacturing Company are manufacturers and merchants.

Mr. CIST: But the greater part of the business is in merchandise and not in manufactures?

Mr. GIBSON: Yes, sir.

Mr. CIST: Now you speak of the fact that if you were located in Nashville the difference in your favor in freights would be about $3,500.

Mr. GIBSON: Yes, sir.

Mr. CIST: I would like to know what proportion of your business that would cover?

Mr. GIBSON: That covers the entire business.

Mr. CIST: I do not mean that. On how large a business does that cover?

Mr. GIBSON: That applies to a line of business as compared with the same line we would have to do in Nashville.

Mr. CIST: On how much business? One hundred thousand, two hundred thousand, or three hundred thousand dollars?

Mr. GIBSON: On about a $160,000.00.

Mr. CIST: Well, now, if you were located in Cincinnati the difference would be still more would it not?

Mr. GIBSON: I do not know that we could reach the same territory on small quantities if located there.

Mr. CIST: The fact is, if you were in any city which was better located as to rates the difference would be still more?

Mr. GIBSON: If we were also located as conveniently to the territory that we now do business in, that might be.

Mr. CIST: That is all.

342 Com'r MORRISON: If there anything further with this witness?

Mr. DANIELLS: We are through with him.

I. B. MARIAN, a witness on behalf of the complainant, having been duly sworn, testified as follows:

Mr. DANIELLS: Do you live in Chattanooga, Mr. Marian?

Mr. MARIAN: Yes, sir.

Mr. DANIELLS: Engaged in the wholesale grocery business?

Mr. MARIAN: Yes, sir.

Mr. DANIELLS: Now you may state to the commission what you know about the discrimination in the matter of freight rates against Chattanooga?

Mr. MARIAN: On eastern freight?

Mr. DANIELLS: Yes, sir.

Mr. MARIAN: Well, it is about fifty per cent. on sixth-class freight between freights shipped between New York, Philadelphia, Boston to Chattanooga and Nashville. The rate on coffee and sugar is forty-nine cents to Chattanooga and thirty-three cents to Nashville shipped over the same line.

Mr. DANIELLS: Shipped through here?

Mr. MARIAN: Yes, sir.

Mr. DANIELLS: Now do you compete for business in the same territory as Nashville?

Mr. MARIAN: Yes, sir. We travel towards Nashville about one-third of the way.

Mr. DANIELLS: State to what extent that interferes with your business and profits?

Mr. MARIAN: Well, they can ship sugar from New York to Nashville and bring it back into our territory and sell as cheaply as we can here, but we cannot go into their territory at all.

Com'r MORRISON: How do you divide what you call your territory from what you call their territory?

Mr. MARIAN: On this Nashville road out from Chattanooga. They can come in on the Memphis and Charleston railroad.

Com'r MORRISON: Do you call your territory all the territory that is nearer to Chattanooga than to Nashville?

Mr. MARIAN: Yes, sir.

Com'r MORRISON: And all that is nearer to Nashville than to Chattanooga you call Nashville territory, is that it?

343 Mr. MARIAN: Yes, sir.

Mr. DANIELLS: You say they can ship through Chattanooga, and bring it back into our territory?

Mr. MARIAN: Yes, sir; but we cannot do anything in their territory at all.

Mr. DANIELLS: If you know any other facts please give them to the commission.

Mr. MARIAN: On cigars and the class which comes mostly from the East they pay ninety-one cents and we pay $1.14; but heavy goods is where they hurt us the most.

Mr. DANIELLS: Over what line do you ship mostly?

Mr. MARIAN: Over the East Tennessee road. It is a little the quickest route. That is considered the best route for us.

Mr. DANIELLS: Now, can you tell about how much you are injured each year by reason of this discrimination?

Mr. MARIAN: Yes, sir; I can tell very close to that. Our freight amount- to over $12,000.00 a year, and the discriminations from the West are about the same in favor of Memphis and Nashville as from the East. In our whole business—I cannot tell exactly how much is from the East, but I think about one-third of our business—and we are discriminated against the same from the West, so that the whole makes about three thousand dollars' difference in our business on account of the discrimination.

Mr. DANIELLS: That is, that much taken from your profits?

Mr. MARIAN: There is no doubt about that at all.

Mr. DANIELLS: You can take the witness, gentlemen.

Cross-examination.

Mr. BAXTER: What proportion of your business is done from the West do you judge?

Mr. MARIAN: About two-thirds.

Mr. BAXTER: And one-third from the East?

Mr. MARIAN: Yes, sir.

Mr. LAWTON: Do you know as a matter of fact that this business comes through Chattanooga that goes through Nashville?

Mr. MARIAN: A large portion of it does.

Mr. LAWTON: Does not the larger portion come the other way by the all-rail line?

Mr. MARIAN: I think not.

Mr. LAWTON: Have you ever investigated the subject to find it out?

344 Mr. MARIAN: I only know from what I have heard through railroad men.

Mr. LAWTON: Do you not know as a matter of fact, that Nashville is nearer New York, Washington and Baltimore than Chattanooga?

Mr. MARIAN: No, sir; I do not know it. I guess it is not.

Mr. LAWTON: It is not nearer to Baltimore?

Mr. MARIAN: No, sir. Chattanooga is nearer Baltimore by railroad or by any other line.

Mr. LAWTON: Are you certain of that?

Mr. MARIAN: I know it.

Mr. LAWTON: Mr. Marion, when you speak about the difference in freight rates and discrimination, you mean by discrimination that rates are higher, do you not? If you go still further off from New York and did business from New York, of course your freight to that point will be still higher, would it not?

Mr. MARIAN: It is not so in this case. Nashville is further from New York than we are, and it gets lower rates.

Mr. LAWTON: Well, suppose you got considerably further off? Do you know as a matter of fact that the rate to Atlanta is the same as to Chattanooga?

Mr. MARIAN: There is not much difference in distance.

Mr. LAWTON: Does not some of the Atlanta freight come through Chattanooga?

Mr. MARIAN: I think not.

Mr. LAWTON: When it comes over the East Tennessee, does it not?

Mr. MARIAN: It comes up from Charleston and those points.

Mr. LAWTON: The East Tennessee does not haul it through Charleston; I mean the East Tennessee to Atlanta?

Mr. MARIAN: They may do so; I suspect they do; but I should think the most of it would come by way of Savannah.

Mr. LAWTON: Do you not know that many of the defendants do an all-rail business to Atlanta?

Mr. MARIAN: I do not know.

Mr. LAWTON: Do you know that the rates are the same to Atlanta as to Chattanooga?

Mr. MARIAN: I think so.

Mr. LAWTON: No matter which way they go?

Mr. MARIAN: I suppose so.

Mr. LAWTON: Macon is less?

345 Mr. MARIAN: It is only a small difference; there is only one hundred miles between the two places, you know.

Mr. LAWTON: Now, does not, as a matter of fact, freight come through Chattanooga to Atlanta and pay the same rates to this point as to Atlanta?

Mr. MARIAN: They may get some freight that way.

Mr. LAWTON: You do not consider that discrimination?

Mr. MARIAN: It goes into a different territory entirely.

Mr. CIST: Do you get any sugar from New Orleans?

Mr. MARIAN: Yes, sir.

Mr. CIST: As a matter of fact, do you not pay the same rate on sugar brought from New Orleans to Chattanooga that Nashville does?

Mr. MARIAN: I do not. I think Nashville pays ten or thirteen and we pay nineteen cents for hundred-barrels lots here. They get a rate of two-thirds of what we do.

Com'r MORRISON: Anything further, gentlemen?

Mr. DANIELLS: We have a map there, if the commission pleases, if you desire to look at the different routes surrounding this place.

Com'r MORRISON: We are quite well acquainted with them from previous cases.

Mr. CLARKE: What do you say, that you ought to have the same rate as Nashville?

Mr. MARIAN: We want the same rate as Nashville; yes, sir.

Mr. DANIELLS: That is all.

W. O. PEEPLES, a witness on behalf of the complainant, having been duly sworn, testified as follows:

Mr. DANIELLS: You reside in Chattanooga?

Mr. PEEPLES: Yes, sir.

Mr. DANIELLS: What is your business?

Mr. PEEPLES: Wholesale groceries.

Mr. DANIELLS: Now, you may give the commission the benefit of any facts you may have that bears upon the questions under investigation.

Mr. PEEPLES: Well, I suppose it is in regard to eastern freight particularly.

Com'r MORRISON: Yes, sir; that is what we are inquiring about.

Mr. PEEPLES: It has been my understanding that freights are a great deal higher to Chattanooga than to Nashville. There
346 is no question about that. As has been stated here the rates are forty-nine cents from Philadelphia and New York to Chattanooga and it would be thirty-eight cents to Nashville going right through here. We do a considerable business. I believe our business now amount- to about one-half million dollars a year, and I suppose about one-third of our entire business comes over the eastern line—goods we buy and sell. I take it, it is about one-third of our business that comes over eastern lines and the balance comes from the West. We are discriminated against in both places. I think that the discrimination against our firm, would amount to four or five thousand dollars a year.

Com'r MORRISON: You mean loss both ways?

Mr. PEEPLES: Yes, sir; I mean both ways.

Mr. DANIELLS: Do you sell in the same territory as Nashville merchants?

Mr. PEEPLES: We would if we could. We cannot go half way to Nashville or to Memphis on account of the discrimination. Memphis and Nashville get a lower rate of freight in there, as I understand it, and they have a lower rate of freight out of there.

Mr. DANIELLS: Now, at this time about one-third of your goods come from the East?

Mr. PEEPLES: Yes, sir.

Mr. DANIELLS: Was there ever a time you received a greater portion from the East?

Mr. PEEPLES: Well, no, sir. We handle soap and candles and everything of that kind, and those things generally come from the

West, and a great many things of that kind we get from the West. I suppose about one-third come from the East.

Mr. DANIELLS: In the last year or year and a half you have been getting sugar from New Orleans?

Mr. PEEPLES: Yes, sir; during the last year we got some from New Orleans. We got all of it from the East up to a year ago.

Mr. DANIELLS: Now, is that true as to anything else?

Mr. PEEPLES: I do not believe there is anything else.

Mr. DANIELLS: About how much sugar do you sell in a year?

Mr. PEEPLES: Well, we sell now and have been selling for the last twelve months from two to four car-loads of sugar a month.

Mr. DANIELLS: You may state now about what proportion your sugar trade bears to your entire business?

Mr. PEEPLES: I would simply have to figure that out.

Mr. DANIELLS: Can you state whether it is small or great?

347 Mr. PEEPLES: It is considerable; the sugar business is considerable of an item.

Mr. DANIELLS: I mean with reference to all your other business?

Mr. PEEPLES: That would amount to four or five thousand dollars a month.

Mr. DANIELLS: And your entire business amounts to about half a million a year?

Mr. PEEPLES: It is running that way now—since about last June or May—about a half million a year.

Mr. DANIELLS: You may take the witness.

Cross-examination:

Mr. POPE: Why did you buy sugar in New Orleans in the last year and a half?

Mr. PEEPLES: Because we could get lower prices; we buy wherever we can get the lowest prices.

Mr. POPE: Therefore you buy in New Orleans now?

Mr. PEEPLES: Yes, sir.

Mr. POPE: What rate do you pay from New Orleans?

Mr. PEEPLES: Nineteen cents for car-loads and twenty-one cents for less than car-loads.

Mr. POPE: The rest of your groceries—the bulk of your groceries, where are they bought?

Mr. PEEPLES: The bulk of our groceries is bought in the East.

Mr. POPE: Of what do they consist?

Mr. PEEPLES: Coffee and canned goods. We buy some canned goods from the West, however. We buy some soaps in the East, though most of them in the West, and we buy a great many different things. I hardly know——

Mr. POPE: It is a variety of articles you buy from the East?

Mr. PEEPLES: Yes, sir. We buy all our cigars from the East, etc.

Mr. POPE: Is the bulk of the tonnage from the East or West?

Mr. PEEPLES: I have stated that two-thirds was from the West.

Mr. POPE: And your sugars are from New Orleans? Where do you buy rice, in the Carolinas?

Mr. PEEPLES: Yes, sir; we buy sometimes in the Carolinas.

Mr. POPE: Do you buy syrups in New Orleans or in the East?

Mr. PEEPLES: In the East.

348 Mr. POPE: That is refined syrups; how about crude molasses?

Mr. PEEPLES: We do not sell anything of that kind very much, and what little we do sell of that we buy in Louisiana.

Mr. POPE: Speaking of the difference in freights in the sum total of a year's business of a merchant where this item of rates to Nashville and Chattanooga was a factor in the expense of doing the business, would you or would you not count that sum as an expense of your business?

Mr. PEEPLES: It is undoubtedly an expense. It is that much extra expense heaped on us. Nashville has not that expense. We have a higher rate to pay, and we say that it is that much extra, because it is that much *of* out of our pockets.

Mr. POPE: If you were located at Nashville, how would your income be affected then?

Mr. PEEPLES: I do not know that I am discussing that. But I am talking about the difference between the two places in freights.

Mr. POPE: I want to see how you treat that item.

Mr. PEEPLES: Well, I mean taking the goods and shipping them from the same points in the East, coming over the same roads, and Nashville being one hundred and fifty miles further off than Chattanooga, that it would get much lower rates than Chattanooga.

Mr. POPE: We have heard also about the particular territory—Nashville territory and Chattanooga territory. Be good enough to explain the legitimate territory on the Nashville road where Chattanooga ought to do business.

Mr. PEEPLES: Half way between here and Nashville.

Mr. POPE: In the direction of Memphis, how far?

Mr. PEEPLES: Well, I consider we ought to go half way to Memphis. The freight being equal, there is nothing to keep us from it.

Mr. POPE: Well, do you sell up to a point nearly half way to Nashville?

Mr. PEEPLES: Some goods, but very seldom. I do not think that we have gone half way to Nashville, because we have not had the freight rates to do so.

Mr. POPE: If the railroads working through Chattanooga did not participate in any degree in the handling of Nashville freights—suppose we did not handle it all—and the Nashville rates remained *in* the same as they are now, you would have the same grievance as against the development of your trade, would you not?

349 Mr. PEEPLES: If there were no railroads between here and Nashville?

Mr. POPE: If we did not do any business into Nashville from the East, haul no goods there, assuming that the Nashville rates re-

mained the same as they are now, you would still want the rates reduced coming into Chattanooga?

Mr. PEEPLES: If the roads running through here did not discriminate against us——

Mr. POPE: You do not understand——

Com'r MORRISON: Let me answer, Mr. Pope.

Mr. PEEPLES: If the roads running through here did not discriminate against us I do — think we would have any charge against those railroads, but we might have complaints against railroads from the West if some towns were permitted to ship goods a greater distance for a less price than others.

Mr. POPE: I would like for you to answer my question just as I put it. Suppose these railroads did not name any rates from eastern cities to Nashville at all—did not do any Nashville business from eastern cities—and the Chattanooga rates remained just as they are now, would you not still feel, or would you still feel that you had a complaint against these rates and would insist that these roads should reduce their rates to Chattanooga?

Mr. PEEPLES: I do not think we would.

Mr. POPE: Your Nashville trade would still suffer?

Mr. PEEPLES: If Nashville got a lower rate of freight than we got here and then they made a rate of freight out of Nashville the same as they do here, the rate would be against us.

Mr. POPE: And you are suffering from an inability to do business?

Mr. PEEPLES: What we are complaining of is hauling freight a greater distance for a less price. I contracted the other day for the sale of some goods to go over the Cincinnati railroad, to be delivered to a point in Alabama.

Mr. POPE: Where did that come from?

Mr. PEEPLES: From the West.

Mr. POPE: What territory is your trade in?

Mr. PEEPLES: On the Western and Atlantic road, on the road to Dalton; on the Chattanooga, Rome and Columbus; on the Cincinnati Southern; on all the roads that run in here.

Mr. POPE: Can you, from general remembrance, state what proportion of the trade as a whole is done in other territory than in the direction of the Nashville territory or the Memphis territory?

350 Mr. PEEPLES: Well, the bulk of our trade is done in other directions; that is, two points out of eight or ten.

Mr. DANIELLS: Is not that due to this discrimination?

Mr. PEEPLES: You cannot expect one or two roads to do the same amount of business as eight or ten. Two roads do that business and eight or ten are running here. We do business by the river also.

Mr. LAWTON: How far down the Western and Atlantic do you sell?

Mr. PEEPLES: To Cartersville.

Mr. LAWTON: That is nearer to Atlanta than to Chattanooga?

Mr. PEEPLES: A little nearer to Atlanta.

Mr. LAWTON: Do you sell western products down that far?

Mr. PEEPLES: Yes, sir.

Mr. LAWTON: Are the rates from the West lower to Chattanooga than to Atlanta?

Mr. PEEPLES: I do not know whether they are or not. I am not posted on western rates.

Mr. LAWTON: You are unable to compete successfully?

Mr. PEEPLES: Sometimes when we come to sell goods we give prices and sell goods in Nashville territory, although at a loss to us.

Mr. LAWTON: Is it not probable that Nashville does the same?

Mr. PEEPLES: I do not think she has to.

Mr. LAWTON: She might do so if necessary?

Mr. PEEPLES: A little bit. That is the way we do in selling goods in Cartersville.

Mr. CONNOR: Please tell the commission if your traveling men do not meet the Nashville merchants competing on the Alabama Great Southern road with you.

Mr. PEEPLES: O, yes.

Mr. CONNOR: On the Western and Atlantic?

Mr. PEEPLES: The Nashville merchants? Well, I suppose they sell some goods there.

Mr. CONNOR: They compete with you on the Nashville and Chattanooga railroad, do they not?

Mr. PEEPLES: Yes, sir; they do, and on *the* all the Nashville branches.

Mr. CONNOR: You meet the competition of Nashville merchants?

Mr. PEEPLES: We meet a great deal of competition on the Alabama Great Southern, and flour can be shipped to Nashville at twenty-two cents a barrel cheaper than to Chattanooga.

351 Mr. LAWTON: Do not your traveling men meet New York merchants at a good many of these places?

Mr. PEEPLES: Sometimes on cigars, but not on such things as groceries.

Mr. LAWTON: But to a certain extent they do?

Mr. PEEPLES: To some extent. We use to have a great deal, but not much now. Competition is so close now that they cannot afford to take the risk on the margin we are taking it.

Mr. CIST: You say you meet competition of Nashville at western and Atlantic points. Can you give any instance of it—on the Western and Atlantic railroad?

Mr. PEEPLES: I am told by our men that they occasionally run up against a Nashville man on that road.

Mr. CIST: Did they examine him as to what he was doing there?

Mr. PEEPLES: No, but in a general way we know that when Nashville men are out there they are there to sell goods.

Mr. CIST: A Nashville man was found there and he told your traveling man something and your traveling man told you something?

Com'r MORRISON: Anything further, gentlemen?

Mr. SHEPPARD: You are not at all familiar with the conditions of traffic at Nashville as compared with those at Chattanooga? You know nothing about the different systems of railroads to Nashville?

Mr. PEEPLES: They have a number of railroads there, but they have not as many lines of railroad as we have.

Mr. SHEPPARD: It would be quite sufficient if the rate to Nashville was raised, would it not?

Mr. PEEPLES: I have never been an advocate of raising rates.

Mr. SHEPPARD: That would suit your purpose in this particular controversy just as well, would it not?

Mr. PEEPLES: *If* course if we were not discriminated against we would not fight, but as to raising Nashville rates we do not wish that.

Mr. CLARKE: Now, you speak of Nashville competing with you on the Alabama Great Southern road. Do you mean in eastern freights, in goods that have come over these eastern roads, that they compete with you on the Alabama Great Southern as to them?

Mr. PEEPLES: Yes, sir.

Mr. CLARKE: To do so those goods would take a through rate to Nashville and then would have to add two locals, would they not?

Mr. PEEPLES: Yes, sir.

352 Mr. CLARKE: And you add one local?

Mr. PEEPLES: Yes, sir.

Mr. CLARKE: As a matter of fact, leaving out what drummers say, when you add to the through rate from the East to Nashville two locals would not that make the entire rate higher than adding one local from here?

Mr. PEEPLES: They claim that they can lay the freight down cheaper than we can.

Mr. CLARKE: Do you know what the rate is?

Mr. PEEPLES: No, sir.

Mr. CLARKE: Do you know what the local is over the Louisville and Nashville to Birmingham and then over the Alabama Great Southern?

Mr. PEEPLES: I do not know.

Mr. CLARKE: So you do not know whether it would be greater or less?

Mr. PEEPLES: Well, the only thing about that is that they can ship goods in there and lay them down there cheaper than we can. We have got to cut our margin.

Mr. CLARKE: Well, do you not know whether the freight paid is greater or less when the two locals are added? Have you ever figured on it?

Mr. PEEPLES: I never have.

Mr. CLARKE: Well, now, about the through rate to Nashville. Suppose this honorable commission raises the Nashville rates the same as Chattanooga, and the Louisville and Nashville and Ohio River routes had the same rates as now and so take eastern traffic over that route, would that give you relief?

Mr. PEEPLES: I do not think it would.

Mr. CLARKE: Then it would afford no relief unless it made them all raise their rates—the Louisville and Nashville and the Ohio River routes?

Mr. PEEPLES: I suppose if they were to come down here—if this road was to come down and those others were to let it stay as it is it would not hurt us.

Mr. DANIELLS: That is all.

T. A. SNOW, a witness on behalf of the complainant, having been duly sworn, testified as follows:

Mr. DANIELLS: Your name is T. A. Snow.

Mr. SNOW: Yes, sir.

Mr. DANIELLS: You reside in Chattanooga?

Mr. SNOW: Yes, sir.

Mr. DANIELLS: What is your business?

Mr. SNOW: Stove and tin business.

353 Mr. DANIELLS: Both retail and wholesale?

Mr. SNOW: Yes, sir.

Mr. DANIELLS: State whether or not you sell goods and compete for business in the same territory as Nashville and Memphis?

Mr. SNOW: Yes, sir, we do.

Mr. DANIELLS: Now, you may tell the commission any facts in relation to discrimination against Chattanooga in favor of these other places.

Mr. SNOW: Well, I have not the figures to prove it, but I know that Nashville gets a better rate of freight from the East than we do. And the merchants down in Alabama can get a better through rate than we can ship to Chattanooga and then ship from here there. So that they can lay down their goods cheaper than we can sell to them.

Mr. DANIELLS: Have you ever had an actual case where you were charged more to Chattanooga by a considerable amount than the Nashville merchant for the same goods? Shipping from the East and what points from the East and over what roads?

Mr. SNOW: Over the East Tennessee from New York.

Mr. DANIELLS: Tell the commission what it was and all about it.

Mr. SNOW: We had a shipment a short while ago, in September I believe it was, where we were charged a $1.14 freight on coal-hods, and the merchant in Nashville got *h* the same goods delivered to him for thirty-six cents.

Mr. DANIELLS: Over the same line?

Mr. SNOW: He wrote me that he had it shipped over the same line. I have not his bill but I have his letter stating that.

Mr. DANIELLS: State whether or not this same party in Nashville bought the goods for you.

Mr. SNOW: They bought all the goods at the same time, bought in the same order with their own, and I suppose the same goods were shipped at the same time.

Mr. DANIELLS: What credit, if any, did they give you on the matter of freights?

Mr. SNOW: They put in my order with the others. They had a part of the goods delivered in Nashville at the thirty-six rate and they allowed me the thirty-six rate the same as they got theirs, and I paid the difference between thirty-six cents and a $1.14, and they refunded the difference.

Mr. DANIELLS: That is a transaction you had with them?

Mr. SNOW: Yes, sir.

354 Mr. DANIELLS: Do you know any other facts?

Mr. SNOW: Well, I have not been keeping track of them. I know we pay a higher rate of freight, but I have not the figures to show it.

Mr. DANIELLS: Have you any idea to what extent your business is affected yearly by reason of this discrimination in freight?

Mr. SNOW: I could not tell that now.

Mr. DANIELLS: Could you approximate it?

Mr. SNOW: No, we do a large business—ours is more manufacturing. We sell more goods that we manufacture than we buy.

Mr. DANIELLS: That is all.

Cross-examination:

Mr. BAXTER: From whom was those coal-hods purchased?

Mr. SNOW: They were purchased from a house in New York, called Ironside Manufacturing Company.

Mr. BAXTER: Where shipped from?

Mr. SNOW: From New York. I have got the expense bill showing exactly what we paid for them.

Com'r BRAGG: Were they carried to Nashville or put off here?

Mr. SNOW: They were put off here. This expense bill shows what we paid to the East Tennessee road. The expense bill from that road to us.

Com'r BRAGG: Put off here at Chattanooga and you paid thirty-six cents?

Mr. SNOW: We paid one dollar and fourteen; the Nashville merchant wrote me that he paid thirty-six cents.

Mr. DANIELLS: He bought goods for himself at the same? They paid thirty-six cents to Nashville and you paid $1.14 to Chattanooga?

Mr. SNOW: I will read a part of the letter (reading): "The rate from Nashville is thirty-six cents. We made you a credit of thirty-six cents and charged it to the Ironside Manufacturing Company on their account." I wrote him to send expense bills and bills of lading. He said he had sent them back to the manufacturers so that they could use them as vouchers to credit me.

Com'r MORRISON: Judge, do you care to follow this line of testimony any further?

Mr. MOON: No, sir; we do not desire to follow it any further. We have the charter of the board of trade here. The answers of the defendants denied the incorporation of the board of trade. I understand they are now willing to admit that and we only offer the charter.

(The charter referred to is marked Exhibit No. 6.)

355 Mr. CONNOR: We would like to submit a statement of facts as to the tariffs, of course with the distinct understanding that any clerical errors will be allowed for. We simply wish to direct the attention of the commission to the facts in the case which can be verified at their leisure. We can show by this the discrimination against us. By the table of distances which is shown here we want to show that we are nearer the eastern seaboard than the city of Nashville. I desire to submit this table to the honorable commission and will read the totals.

From the city of New York to Nashville, 1,012 miles by the Louisville and Nashville; from the city of New York to Chattanooga it is 900 miles.

If we come by way of the city of Cincinnati to the city of Nashville we find that it is from New York to Cincinnati by the Pennsylvania 717 miles; from there to the city of Nashville it is 295 miles, which makes a total of 1,012 miles. But if you come down there to Cincinnati it is 717 miles from New York, and 335 miles to the city of Chattanooga from Cincinnati, which makes it only 1,052 miles to Chattanooga by the longest route; only forty miles further than Nashville, and yet they get a rate of ninety-one cents and we pay $1.14.

(The statement referred to is marked Exhibit No. 1.)

The question has been asked by gentlemen here if the rate from New York to Nashville added to the rate from Nashville to a point on the A. G. S., would it not be greater than it would be by adding the New York rate to the local from Chattanooga. The impression made is wrong. The rate from Nashville is less and I will take the liberty of reading to the court from the statement.

If you add to the rate of $1.14 the rate to Chattanooga, the rate to Fort Payne you will have a higher rate than from Nashville to the same point. By adding to the ninety-one cent rate to the city of Nashville the rate of sixty-one to Fort Payne the freight can be laid down at $1.52 in Fort Payne or nine cents cheaper than we can do it. This prevails at all points.

Also from the city of Cincinnati to Chattanooga it is 335 miles. Now, sir, they can lay down first-class freight from New York, that is merchandise, bringing it from New York and reshipping at Cincinnati and lay it down from Cincinnati at Fort Payne at $1.44, while it costs Chattanooga $1.61.

The city of Cincinnati can ship freight from New York to Cincinnati and reship it from there, and they can lay down first freight at points on the Memphis and Charleston road for
356 less than Chattanooga merchants can do it; for instance, the rate to Decatur from Cincinnati, the through rate would be $1.40 while the merchants of Chattanooga pay $1.62. The same ratio prevails in all the other freights.

(The statement referred to is marked Exhibit No. 2.)

Com'r MORRISON: You claim, Mr. Connor, that the rate sheets which are on file with the commission will prove this?

Mr. CONNOR: We claim nothing unless the rate sheets prove them.

Com'r BRAGG: You mean that these are a condensed summary of what the tariffs show?

Mr. CONNOR: We have here now a comparison of freight rates to stations on the Nashville, Chattanooga and Saint Louis railway. The town of Bridgeport is one hundred and twenty-nine miles from the city of Nashville, and thirty-eight miles from Chattanooga. Yet, the city of Nashville lays it first-class freight down in Bridgeport at $1.41 while we pay $1.42. Let us go down to Dunlap. That is from Nashville 161 miles while it is only 66 miles from us. We have to pay for first-class freight to the city of Dunlap $1.45 while the city of Nashville though it hauls the freight nearly 100 miles further, lays it down for two cents less, that is at $1.43, and that prevails at all stations and on all the branches of that road.

(The statement referred to is marked Exhibit No. 3.)

I desire to read the answer of the Pennsylvania railroad.

(Mr. Connor reads the answer referred to and the same is marked Exhibit No. 4.) I wish now to show that the rates to Nashville are prorated over a long line from the city of New York and is about 1.8 cents per ton per mile to the city of Nashville, the Louisville and Nashville road taking the same rate per ton as the Pennsylvania road.

The Pennsylvania railroad states in its answer that it forms a route with the Shenandoah Valley railroad, the Norfolk and Western railroad and other railroads and that the rates are fixed by the Southern Railway and Steamship Association and that it accepts the rate fixed to Nashville.

The Cincinnati Southern railroad charges more per ton per mile into Chattanooga than the same line charges from the city of New York into the city of Nashville.

I submit these papers for the consideration of the commission.

(The papers referred are marked Exhibit No. 5.)

Com'r MORRISON: Have you anything further, gentlemen?

357 Mr. MOON: No, sir; we will close.

Mr. BAXTER: We call Mr. E. Fitzgerald.

E. FITZGERALD, a witness on behalf of the respondents, having been duly sworn, testified as follows:

Mr. BAXTER: Do you know the nature of the complaint that is made in this petition, that was read this morning in which the facts are admitted that the rates to Nashville and Memphis are less than they are to Chattanooga from the eastern points named. Please state to the commission in your own way the reasons that exist for those rates and why there is no relative injustice to Chattanooga.

Mr. FITZGERALD: The rates to Nashville are made by adding the rate to Louisville to a line of rates adopted by the Louisville

and Nashville railroad as ascertained and supposed to be the rates charged by the steamer lines on the Ohio river and the Cumberland river both from Louisville and Evansville into Nashville. That the adjustment of rates thus made has existed for a great many years. The rate at the present time is made by the trunk-line rate to Louisville plus these figures. As far as the division of the rate—but I do not suppose that that is of any importance in this case. But in reply to Maj. Connor, I will say that recently the Pennsylvania railroad and other lines have formed an all-rail line or a trunk-line route and that the division of those rates charged, the percentage, was not ascertained upon the basis of miles but they took the rates from New York to Louisville and then the rate from Louisville to Nashville in the manner I have stated by basing the percentage upon what is called a revenue basis and that is how those rates are now divided, but in the division of it you will find that the lines south of Louisville receives the proportion which I have given you as being the basis of those rates.

The Nashville question is one with which we have worked for a very long time not only in regard to the question of rates but in the question of classification, and it would be impossible for you to arrive at a fair reckoning on the rates until you have before you both the rates and the classification. The Southern Railway and Steamship Association has no control over the Nashville rates. It is not regarded as under their control in that association. It is not made by them or by the East Tennessee road. It is not made by any line that enters Nashville from the South nor have they
358 any voice in the construction of that rate. It varies according as the rates vary from the East to the Ohio River towns—to Cincinnati, to Louisville, and to Evansville.

Memphis doubtless you know—the rates from Memphis is made by competition by way of New Orleans. The rates are made by steamer to New Orleans and thence by rail to Memphis and likewise by water to Memphis. Those rates are very much lower than our rates now in effect.

Chattanooga is put in a group the same as Atlanta, Rome, Anniston, Attalla, and many other points that constitute that group. It is made by agreement among the members of the Southern Railway and Steamship Association.

In regard to the volume of business, the trunk lines carry, I would say, certainly half and possibly more of the business to to Nashville than is carried by these lines either by the southern routes or by the Tennessee line. It is a question of competition.

It has been suggested in one of the questions here, what the effect would be if these lines were to withdraw entirely from competition at Nashville. It would not have any effect with the Nashville rate, but it would affect us.

In that connection I want to state the fact that we receive a large amount of traffic for the South from the direction of Nashville—from the West through Nashville—it is immensely greater in volume that the traffic from the South, from the East, and from all directions in the direction of Nashville. Thus, it is, if we were for-

bidden to compete against a condition for which we are in no degree responsible, if we were forbidden to go into that territory because of an alleged difference that is here alleged it would place us at a disadvantage, it would place the southern territory at a disadvantage, it would place all the territory passing through Chattanooga at a disadvantage, because it would not be possible for us to carry traffic from the western territory to the southern territory at the same rate as we are now carrying. Already our tonnage south-bound from the West into our southern territory into Chattanooga territory is so much greater than our traffic north-bound through Nashville that it would become necessary for us to withdraw from certain lines of business or else send our empty cars in that direction.

I do not know that I can say any more than to submit that the rates from New York to Nashville are lower because of the different conditions, such as absolute water competition; lower be-
359 cause of rates made by influences over which we have no control; lower from the fact that it is possible to ship this property at the full trunk-line rate and then reach Nashville in the rear at rates we could not control or affect.

If we were to make a lower rate to Chattanooga let us see what would be the effect of that. We enter a large part of the southern territory through Chattanooga.

Take Atlanta. Is it possible to say that the lines working from New York, through Savannah shall not work to Chattanooga? Yet, if you reduce the Chattanooga rate you come directly in conflict with the fourth section. There is no water competition that would have that effect at that time. You cannot reduce the rate to Chattanooga without reducing it to Atlanta, Macon, Augusta, Knoxville and Bristol. It is the key to the whole situation in the southern territory, and you cannot make these reductions without bringing about radical reductions to other points that would force losses upon these roads that would mean bankruptcy. You cannot advance Nashville rates because of the causes I have pointed out. You cannot advance the rates to Memphis because of the water line to that point, the rate being 25 cents per hundred pounds less on first class than our- is.

Com'r BRAGG: What line is that?

Mr. FITZGERALD: I refer to the line by way of New Orleans. The Mississippi Valley line is 25 cents less; the river line is 45 cents less. These are the conditions.

There is another point, and it is not worth while to deal with tariffs because you have all the tariffs on file in your office.

When you look at Chattanooga's growth, all of her great interests built up here, and realize the fact that by the admission of these gentlemen, and I think they are in error even taking their own figure for it—that the amount of traffic involved in this complaint is less than one-third of the merchandise. Now, I want you in dealing with this proposition, I want you to go into the figures and go into the conditions that have made this city what it is. I want you to take the rates from Chattanooga and I want you to observe

the care with which the roads watch that interest. I want you to observe the rates on the manufactures, not the rates on epsom salts. And I then want you to make a comparison of those rates with the rates at competing markets. And I ask you to consider what these railroads must have done to build up these communities in its manufactures, enabling it to produce at home those articles. I
360 then want to call your attention to the rates from the territory south of here; the rates on sugar and molasses and coffee they bring in here from New Orleans. Take those into account if you please. Take the rates from any western city to Chattanooga and see what they are.

In dealing with this question you are dealing with questions of immense importance to this country. It involves the whole southern fabric of rates.

Mr. MOON: The gentleman has made a speech.

Com'r MORRISON: He is swearing to it though.

Mr. FITZGERALD: I do not desire to make a speech. I want to state the facts as they are. That this discrimination, as they allege, is upon an insignificant part of the business, but it is a matter of vital importance to us. I do not know that I need say anything more.

Com'r BRAGG: Do you understand that there is actual competition at Memphis between the New Orleans line and your line; actual competition?

Mr. FITZGERALD: I had occasion to look into that a little while ago. Almost the entire heavy business from the East is carried to Memphis by way of New Orleans. We have considered the matter very seriously as to what action we should take, whether to meet the rates or abandon the business, and we have actually agreed that these rates by the river lines and by the Mississippi Valley line shall continue in effect, and we do not pretend to meet the competition. We have not attempted to do the business. It is true as to cotton this season. Last year up to the 7th of September we carried twenty odd thousand, nearly thirty thousand bales; this year we have carried less than seven thousand bales. This is because of the rates that we would not meet from New Orleans to Memphis, the river and rail rates.

Com'r BRAGG: Well, now, the next point to which I want to call your attention is whether this traffic by the water line at Memphis involves the carriage of property that is large in amount from eastern points.

Mr. FITZGERALD: The volume of the traffic?

Com'r BRAGG: Yes.

Mr. FITZGERALD: It is considerable in volume.

Com'r BRAGG: About how does it compare with the whole amount from the east?

Mr. FITZGERALD: I assume that taking the whole traffic from eastern cities, from New York—now from Baltimore, of course the line by way of New Orleans would not attempt to do much because of the fact that it would be necessary to carry it to New York and

then to New Orleans, consequently out of Baltimore they do
361 not do much. From Boston, from Philadelphia, they do considerable as well as from New York. Now, I take it that at least one-third of the entire volume of business from eastern cities to Memphis is going into Memphis by way of New Orleans.

Com'r BRAGG: By water lines?

Mr. FITZGERALD: Either water or rail. Both of their rates are very much lower than ours.

Com'r BRAGG: You know the commission has ruled on that subject of water rates?

Mr. FITZGERALD: That effects the water rates.

Com'r BRAGG: What I was directing your attention to was the ocean and river rates.

Mr. FITZGERALD: It would be difficult for me to tell you that. It is a very large proportion of the business to Memphis which goes by steamer.

Com'r BRAGG: Well, could you prepare a statement of that kind?

Mr. FITZGERALD: I will endeavor to do that, though it is very difficult to get at that.

Com'r MORRISON: Do they not have some tonnage returns at Memphis in regard to that?

Mr. FITZGERALD: No, sir; but I can probably find out about the proportion from one of the largest concerns in Memphis. Several of the largest concerns in Memphis ship a very large proportion of their heavy traffic by river from New Orleans.

Com'r MORRISON: It comes to New Orleans by steamer?

Mr. FITZGERALD: Yes, sir; and thence by river. It is a very large proportion of the business, and the best evidence of that water competition is as I have just pointed out.

Com'r BRAGG: How about that water competition to Nashville, does it amount to anything much, or do you know anything about that?

Mr. FITZGERALD: In reply to an inquiry of the Nashville and Chattanooga road from me I have a letter on that subject, in which they assert most emphatically that it is of controlling force.

Com'r BRAGG: You do not know that yourself?

Mr. FITZGERALD: I have no knowledge of that myself. We only know this fact that in meeting the rates at Nashville we make them upon that basis. We do not make the rates at Nashville, have nothing at all to do with making them.

Mr. DANIELLS: I do not care to ask any questions.

Com'r MORRISON: Anything further, gentlemen?

362 Mr. LAWTON: As to the Georgia Central we have no testimony to offer. We simply rest upon the answer and offer no evidence.

Mr. BAXTER: We would like to introduce Mr. Pope.

Form 1416.

East Tennessee, Virginia & Georgia railway.
Memphis and Charleston railroad.
Mobile and Birmingham railway.
Knoxville & Ohio railroad.

Edwin Fitzgerald, traffic manager.

East Tenn., Va. & Ga. R'y. East Tenn. division & branches, 356.0. Georgia division and branches, 488.5. Alabama division and branches, 390.5. Knoxville & Ohio railroad, 66.0. Memphis & Charleston railroad, 330.0. Mobile & Birmingham railway, 149.3. Total mileage, 1,780.3.

KNOXVILLE, TENN., *Nov.* 23*rd*, 1890.

Edward A. Mos-ley, Esq., sec't'y Interstate Commerce Commission, Washington, D. C.

DEAR SIR: Reading over my testimony before the board as taken by my secretary, I desire to ask some slight changes and revisions, and beg to submit herewith what is intended to be an accurate statement of the case as presented in my testimony.

If not inconsistent to the rules of the commission, I would be glad to have this substituted, and on comparison with the notes of your stenographer, it will be found substantially in accordance with my statement of the case at the time of the hearing.

Yours truly,

(Signed) EDWIN FITZGERALD,
Traffic Manager.

Interstate Commerce Commission.

OFFICE OF THE SECRETARY,
WASHINGTON, *December* 1, 1890.

Major G. C. Connor, secretary board of trade, Chattanooga, Tennessee.

DEAR SIR: I herewith enclose a copy of the testimony taken in your cases at Chattanooga.

Traffic Manager Fitzgerald has sent to this office a revised
363 statement of his testimony, which he wishes to have filed.

This statement is forwarded for consideration. If you consent the statement of Mr. Fitzgerald will be placed at the end of his testimony and marked "Revised testimony of Edwin Fitzgerald." Please return the statement with your reply.

Very respectfully, —— ——, *Secretary.*

Revised testimony of Edwin Fitzgerald objected to by complainant. See last page of complainant's brief.

Testimony before the Interstate Commerce Commission.

EDWIN FITZGERALD, traffic manager, E. T., V. & G. R'y, sworn, testified as follows:

Mr. BAXTER: You have heard the complaint set forth in the petition, please state to the commission any facts you know that justify the present adjustment of rates from the East to Memphis and Nashville and Chattanooga.

Mr. FITZGERALD: We understand the issue to apply strictly as to the rates from eastern cities to Chattanooga, Memphis and Nashville.

The same total rates apply to Chattanooga as to Atlanta, Selma, Montgomery, Anniston, Rome, Attalla. The rates to Atlanta, Montgomery and Selma are made with reference to the controlling influence of water lines. In adjusting the rates from eastern cities to Chattanooga it has been deemed proper to apply the same totals as to Atlanta, although the distance for the purposes of rate-making is greater to Chattanooga than to Atlanta. In the matter of rates to Memphis and Nashville the conditions under which they are fixed are entirely dissimilar; they are in no degree influenced by competition of lines entering Nashville or Memphis through Chattanooga, nor have such lines any voice or influence in the making of such total rates. The element of controlling force, as will be shown, in fixing these total rates is the presence of the Ohio and Cumberland rivers at Nashville, and the Mississippi river at Memphis, affording river lines of communication from the Ohio River termini of the trunk-line system, by which low combination of rates can be made, but more forcible still as regards Memphis rates in the fact of communication by steamer lines from New York to New Orleans, and thence by the Mississippi River steamers.

364 That this competition is of controlling force is unfortunately for our interest made too apparent by the volume of the business they actually control, while our rate from New York on first class is $1.00 per hundred pounds (corresponding rates on other classes) the water lines make such figures as they see fit, regardless of the interest of the rail lines, and at the present time the published tariff- of such water lines show a difference in rates from New York to Memphis of 35c. per 100 lbs. on first class less that the rates of the rail line, and they make lower figures when the necessity requires. Memphis has the benefit of the steamers and barge lines plying the Ohio and Mississippi rivers between Pittsburg, Cincinnati, Cairo, St. Louis, &c., and New Orleans, all of which stop at Memphis and afford large facilities and frequent communication, and it is this competition that does, and has always, fixed the rates from eastern cities to Memphis, and the conditions cannot be changed.

As to Nashville rates, the same conditions of water competition prevail, stronger, however, in controlling force than exists at Memphis. As has been shown, steamer lines operate on the Ohio river from Pittsburg, Cincinnati, Louisville, &c. Nashville is located on the Cumberland river; it is a tributary of the Ohio; steamer lines operate on this river practically nine months in the year; their trips are frequent, and they extend large facilities for the control of traffic. The evidence as to the rates they actually charge from Cincinnati, Louisville, Evansville, &c. (these points being the Ohio River termini of the trunk-line system to Nashville) will hereafter be made to appear. The rates from eastern cities and Nashville are made by adding to the tariff rate from New York to Louisville the approximate rate charged by the river steamer lines from Lou-

isville, though as a fact the steamer lines do actually charge less than these figures, and considerably less when they so desire. In consequence of this combination, a higher rate cannot be charged by the trunk lines in connecting with the Louisville & Nashville railroad, than the present rate of 91c. per 100 lbs. first class; this is made by adding sixteen cents south of Louisville, to the New York-Louisville rate of seventy-five cents first class, with corresponding differences on other classes. I have endeavored thus to show that by the fact of this water competition, elements of controlling force, higher rates cannot be maintained to Nashville and Memphis, and the necessity for lower rates to Nashville is because of the fact that the steamers to Nashville enjoy shorter rail
365 connections from the East and accept rates which to some would be considered absurdly low; it is not a sentiment or a theory, as you will observe by further testimony, but it is a condition, and one over which southern lines have no control; they have no voice in the fixing of the rates nor an influence in causing them to be changed. No interest of southern lines is served by the lower rates to Nashville.

If it be unlawful for southern lines to compete for traffic to points to which the advantage of distance is with them; if it is unlawful for the commercial interest of Nashville to secure the advantages of quicker time and the better means of transportation that is extended by southern lines, and by reason of this violation of the law, as is alleged, southern lines should withdraw from competition for Nashville traffic, in what manner could Chattanooga be benefited? What other effect than ultimately to be hurtful to Chattanooga interest? It must be apparent to your honorable commission that if, as alleged, it is unlawful, discarding the actual conditions of water competition of controlling force, to charge a higher rate to Chattanooga than to Nashville, the Chattanooga rate cannot be reduced without effecting reductions to all points east of Chattanooga as far as Bristol. It would likewise necessitate reductions to Macon, Atlanta, Dalton, Rome, and thus will be destroyed the entire rate fabric of the South, from the Mississippi to the Potomac, from the Ohio to the Atlantic. If it is found a violation of the law to charge lesser rates to Nashville and Memphis from eastern cities, it would become indefinitely more unlawful to charge a lower rate to Chattanooga than to Atlanta, because all the business of Chattanooga entering through Charleston, Savannah and Brunswick and by the Piedmont air line, must necessarily pass through Atlanta, Dalton and Rome. It must be apparent, therefore, if it is found unlawful to engage in traffic between eastern cities and Nashville under the conditions as they are, and no existing law can change it; the necessity would be forced upon southern lines to withdraw from such traffic, for the little net revenue that results from it is insignificant by comparison with the destruction that a general reduction of rates would bring.

I have not particularly referred to the figures. The tariffs of our lines are on file in the office of the commission, but I do request to have made a part of this testimony the letter which I will hand to

the secretary, giving the rates charged by the steamers from Louisville to Nashville, and the figures used by the L. & N. Com-
366 pany south of Louisville, in making the total rates from eastern cities to Nashville.

The conditions of traffic and revenue enjoyed by southern lines is very similar to that of northern and western lines; the same conditions of rate construction that prevails for the immense volume of traffic passing over the lines of the North and West, if applied in the territory of the South would simply result in total bankruptcy of the railroads, and to make such rates upon merchandise traffic in our territory, would be to court destruction. It will occur to you that there must be some point at which the eastern lines with their low-rate basis will meet the southern lines, and Nashville and Memphis located well into southern territory, are made the points at which this competition meets, largely because of the water facilities that make possible low rates from the Ohio River points, therefore the break in the rates as between the eastern and trunk-line system and the southern system, meet- at these points.

In fixing the rates from western points to southern territory practicably the rates are fixed to the Ohio river, and another tariff is established from the Ohio and Mississippi River points to the territory of the South; it is possible therefore to adjust the rates so that Chattanooga and other points are so arranged as to give to them the benefit of their geographical position. Consequently from western territory, Chattanooga has an advantage in rates that Atlanta, Macon and other points further distant from the markets, does not enjoy.

That the business done by the southern lines to Memphis and Nashville is in a measure profitable, is admitted, but to reduce all of our rates to the same basis would result in destruction and practical confiscation of the property.

The traffic from eastern points to Chattanooga, constitutes but a small part of that which goes to make Chattanooga important as a commercial center; of the staple products, many of the most important are bought from other sections; molasses, sugar and considerable coffee from New Orleans, and in all instances Chattanooga enjoys the benefit of favorable rates; so likewise from the West. That it would be hurtful to Chattanooga's interest alike with other southern communities to compel southern lines to withdraw from Nashville and Memphis traffic can I believe be demonstrated. A large element of the business of Chattanooga is in the sale and distribution of food products brought from the West, and in the nature of things, the tariff must be as low as consistently can be
367 made. The traffic from the West to the South is very much greater in volume than is the tonnage from the South to the West, consequently an important consideration in the matter of traffic from the East to Memphis, Nashville and other points similarly situated in the matter of competition, is found in the fact that this business, even at low rates, makes it possible to furnish loading for cars which otherwise would return empty. It must be apparent therefore if for the purpose of handling the large traffic in food pro-

ducts from the West to Chattanooga and other southern points, much the largest proportion of the cars containing such traffic were returned empty, no other result could follow except that which would look to the advance in the rates upon this immense and important traffic. It can be demonstrated that the importance and magnificent growth of Chattanooga as an industrial and commercial center, could not have resulted if the influence of rates *are* as hurtful as has been stated, as a fact it is the result of the most liberal policy on the part of the managements of the railways identified with its interest.

The traffic from the eastern cities is an insignificant part of the total that goes to make up its importance as a manufacturing and commercial distributing point.

In the adjustment of rates from the West as I have said to Chattanooga, it possesses advantages, and in the adjustment of rates upon the traffic distributed by the merchants of Chattanooga, the railway managements have been foremost in their efforts to promote its interest; look at its growth; at the great industries built up and made possible by the liberal policy in the adjustment of rates.

In dealing with the Chattanooga rates from the East, you have before you the interest as I have shown that controls the entire southern fabric of rate construction.

Mr. MOON (interrupting): I hardly think it proper for the gentlemen to make a speech.

Commissioner MORRISON: Let him go on, he is under oath.

Mr. FITZGERALD: I am simply stating facts. In dealing with this Chattanooga question, you are handling a matter of vital importance to the whole South. I do not know that I need say anything more.

Commissioner BRAGG: Mr. Fitzgerald, I understood you to say there was a good deal of competition between your line and the water lines via New Orleans to Memphis.

Mr. FITZGERALD: Yes, sir; a very large proportion of the heavy classes of goods, including canned goods are carried by the
368 water lines, and only very recently we had under consideration the question of endeavoring to meet some of the rates or entirely abandoning competition for such traffic. The force of the competition is illustrated by the movement of cotton via New Orleans; from Sept. 1st to Nov. 7th of last year, the lines from Memphis, via New Orleans, carried about 43,000 bales; the corresponding period of this year, they have carried upwards of 61,000 bales, while our company's loss has been about in proportion to their gain.

Commissioner BRAGG: The next point worthy of attention is whether this traffic by water to New Orleans is considerable in volume.

Mr. FITZGERALD: The volume is considerable, but about how much, it is impossible for me to say. The volume from Baltimore, of course, would not amount to much; from Philadelphia, they do considerable, and from New York and New England, they move I believe at least one-third of the volume of business.

Commissioner BRAGG: What proportion would go from New Orleans by rail?

Mr. FITZGERALD: It would be difficut for me to tell, though a large portion goes by steamer from New Orleans. I understand the largest concerns in Memphis, Lowenstein Bros., Menken Bros., and others, ship a large proportion of their heavy traffic by river from New Orleans.

Commisssioner BRAGG: What about the water competition at Nashville?

Mr. FITZGERALD: The Nashville & Chattanooga road will answer that question fully. I have a letter from Mr. Knox, general freight agent of that road, bearing upon the subject, which I will ask to make a part of the testimony. I know that water competition exists at Nashville, and the rates from the East are made upon that basis.

No cross-examination.

A. POPE, a witness on behalf of the respondents, having been duly sworn, testified as follows:

Mr. BAXTER: Will you please state what the facts are in your knowledge that you think justify the difference in rates at Chattanooga, Nashville and Memphis.

Mr. POPE: I have naturally a certain amount of familiarity with the construction of Nashville rates and participation therein. Any statement that I make is necessarily an indorsement of what
369 has been said by Mr. Fitzgerald, of the non-participation of the lines through Chattanooga in making rates to Nashville. We are entirely clear and well grounded in the belief that the competition in handling traffic at Nashville at the rates at which it is done entirely is legitimate and in no respect violative of law.

The conditions, as I have endeavored to set out in the answer of the Norfolk and Western railroad, we believe are commercial conditions that pertain only to Nashville and that they are distinctive in all respects from the conditions surrounding the trade at Nashville.

The Southern Railway and Steamship Association has been referred to as being a party interested in controlling rates from eastern cities to Chattanooga. It may not be amiss for me to state that this is simply a voluntary arrangement, as explained to your honorable body at different times; it is simply a clerical organization for the purpose of harmonizing these rates at various competing points. In doing that it has put Chattanooga in a certain group of rates with other points which experience has justified the parties interested in considering that Chattanooga should be so grouped; that the best interests of fairness, and equity to the different markets in the South and Southwest justified that arrangement, and I assert that it would be absolutely necessary if a change were made in Chattanooga rates to make like changes in rates at other points embraced in that group, and I cannot understand, when looking at it from the point of view entertained by the merchants, what they desire except

something special with which to enable them to compete against other points, such as Nashville and Memphis.

I cannot understand how they are going to be benefited by having rates reduced here which will compel rates to be reduced at from twelve to twenty other towns south and southwest of them that will simply destroy their ability to do business in any preferential way against those towns. What they might make in having a lower line of rates to compete with *the* Nashville and Memphis will be lost to them in the reductions that would certainly follow in other directions where it is positive in my mind that their trade is most valuable. I think evidence has been submitted as to the direction of the trade of Chattanooga, to show the direction of the volume of trade. As to what extent trade is done in the direction of Nashville and Memphis there has been contrariety of testimony, and it is very indefinite.

I know of no other facts that I could state in this matter that has not been fully set forth.

370 Com'r MORRISON: You have stated the reasoning by which you state the conclusion that these rates are made? We have got to reason some too and we want the facts.

Now you say on behalf of your road that we charge less to Nashville even when we go through Chattanooga than we do to Chattanooga; but you say in your answer that we charge no more than a reasonable rate to Chattanooga, and we charge less to Nashville because we get some profit out of it but we charge to Nashville not all we ought to have but all we can get. Because if you did not carry at that rate some other carrier would carry it by us to Nashville at that rate. Then we would get nothing out of it.

Mr. BAXTER: It is on you to prove, having admitted that the rate is less to Nashville than to Chattanooga, it is on you to show that freight is carried by water some way, either by rail to Cincinnati and then down the river to Nashville at a lower rate than this rate to Chattanooga, or by some other water route that forces you to give them a lower rate.

Now, to what extent, if at all, is this same freight that goes through here cheaper to Nashville, carried to Cincinnati and then by river to Nashville or carried to New Orleans and then by river to Nashville, either part water and part rail or all water.

Com'r BRAGG: In other words, just in a few words, Mr. Baxter, state whether this competition at Nashville between the water lines and rail lines that bring down those lower rates is actual, as the commissioner has frequently decided it must be in order to justify lower rates, and whether it involves traffic important in amount.

Now, Com'r Morrison has just said that under the construction the commission has given the fourth section of the act to regulate commerce, whenever a carrier admits or the evidence shows that a carrier carries freight from the eastern seaboard to a place like Chattanooga at a higher rate than to a place like Nashville, which is a longer haul, then the burden of proof is on the carrier to show that there is water competition at Nashville which is important in amount;

either all water competition or part water and part rail. Now, what are the facts?

Mr. POPE: We understand the matter to be just this way. The rate from New York to Louisville is on the basis of seventy-five cents and that the average rate charged on the Ohio from Louisville to Nashville is sixteen cents. I may be wrong a cent or two in some of the figures. But a series of figures have been adopted by the Louisville and Nashville railroad based upon the actual
371 river figures at which freight is brought from Louisville to Nashville by the river, this makes the rate to Nashville seventy-five plus sixteen, or ninety-one cents.

It is also true that freights come to Pittsburg and then can be carried from Pittsburg via the Ohio and Cumberland rivers at very low figures.

Com'r BRAGG: Is the freight actually carried?

Mr. POPE: It is actually carried in considerable amounts. The Nashville and Chattanooga people are in a better position to testify as to that than we southern lines. The rate has been named to us and we have been acceptors from time to time of the series as being made and applied by the lines from the Ohio gateways. The lines through Nashville have been the acceptors of the rates as made under the conditions I have stated.

As to the actual tonnage carried I am not able to testify. In so far as Memphis is concerned I can state knowingly that the volume of traffic that goes by the Morgan line from New York to New Orleans and then up the river by steamer or carried by the Mississippi Valley railroad at river rates, as being very large. I know that the traffic of the Cromwell and Morgan lines is constantly increasing.

Com'r BRAGG: It might be well enough, Mr. Pope, to get up some tables on that subject.

Mr. POPE: I think we can show approximately the amount of tonnage. In so far as Baltimore is concerned it would be incidental. At Philadelphia that traffic is very large. You will find that the steamship companies' agents at Philadelphia and New York *and* receive property for the steamship lines. Traffic is carried from Boston by various lines to New York and is there given to the southern steamship lines. There is nothing hypothetical in that, they are matters of actual fact. The rates to Nashville are made in the way I have stated and have always been represented to us as being due to water competition.

Cross-examination:

Mr. CONNOR: You have been general freight agent for your road for a number of years. Do you say that the rate was made by the Louisville and Nashville railroad from Cincinnati to Nashville upon the figures that the river transportation made?

Mr. POPE: They were made upon a series of figures, as we understand it, averaged upon the river rates. I know that the lines composing the Virginia-Tennessee air line has never of its own motion made the Nashville rate.

372 Mr. CONNOR: I asked you if the Louisville and Nashville railroad made their rate from the city of Cincinnati to Nashville basing them on the river rates?

Mr. POPE: Yes, sir.

Mr. CONNOR: As one connected with the Southern Railway and Steamship Association, do you know that efforts have been made several times to compel the Louisville and Nashville to raise those rates?

Mr. POPE: Frequently efforts have been made to do so.

Mr. CONNOR: Have not efforts been made to raise rates from Cincinnati to Nashville by the Southern Railway and Steamship Association?

Mr. POPE: Yes, sir.

Mr. CONNOR: On more than one occasion?

Mr. POPE: Yes, sir; but the Louisville and Nashville said it could not raise those rates.

Mr. CONNOR: If the Southern Railway and Steamship Association thought that the rates ought to be raised for their interests why did not the Louisville and Nashville raise them?

Mr. POPE: I do not know why.

Mr. CONNOR: They gave you some reason for it, did they not?

Mr. POPE: I do not know what particular reasons were given. They made a demand upon the Louisville and Nashville to raise those rates, that is all I know.

Mr. CONNOR: I want you to answer my question.

Mr. POPE: I do not remember the particular reasons or the particular efforts to which you refer. I know that efforts were being constantly made to raise them.

Mr. CONNOR: Why did they refuse?

Mr. POPE: I do not remember Mr. Smith's reasons.

Mr. CONNOR; Now, you do not know why they refused to raise them?

Mr. POPE: I do not know, but I am positive they were averaged on the river rates.

Mr. CONNOR: Do you know what the first-class rate from Cincinnati to Nashville is?

Mr. POPE: I do not remember.

Mr. FITZGERALD: An effort has been made by the Louisville and Nashville railroad to advance the rates to Nashville not only once but many times, and they have persistently refused to advance the rates to Nashville because of the proportions charged by them from Louisville to Nashville were as high as could be charged because of
373 the rates being the same by the river, and that it was caused by water competition. In every effort to get the Nashville rates higher the Louisville and Nashville has persistently declined to advance those rates because of actual water competition. Not only has this been true since the existence of the commission, but years prior to that.

Mr. CONNOR: Now, Mr. Pope, the rate is twenty-six cents. Is not that the regular *pro rata* of the entire sum, per ton per mile, to the city of Nashville?

Mr. POPE: I am not familiar with that.

Mr. CONNOR: We make that assertion, may it please the court. We claim that the rate to the city of Nashville is a *pro rata* based upon the Pennsylvania standard rate from the city of New York to the city of Nashville and that the rate to Nashville is averaged that way.

How much actual freight of the classes we are talking about between Cincinnati and Nashville that comes from New York—how much of the entire tonnage that comes from New York to Nashville, comes by water?

Mr. POPE: I cannot express any opinion about that; I did not make any statement on that subject.

Mr. CONNOR: Well, if you say that you do not know, I suppose that ends that controversy.

Mr. BAXTER: By reason of the misdirection of the notices we did not receive them for two weeks.

Mr. CIST: There is water competition from Cincinnati also.

Mr. BAXTER: We think it has been sufficiently proved, certainly as to Memphis.

Com'r MORRISON: It is indefinite as to Memphis. You do not tell us how much there is.

Com'r BRAGG: The witness Fitzgerald is to furnish us some tables, but I do not know what they will show on that subject.

Mr. CONNOR: Do you know how many months of the year steamboats can transport freight from Cincinnati to Nashville?

Mr. POPE: I cannot tell positively.

Mr. CONNOR: Do you suppose they can do so for six months?

Mr. POPE: Yes, sir.

Mr. CONNOR: Do you think they can transport it for nine months?

Mr. POPE: I cannot say as to that. There are others here more competent to testify as to that.

Mr. CONNOR: Now, then, you feel positive as to six months, but not positive as to any time beyond that, and in your mind there is a possibility that for three or four months it cannot be transported?

374 Mr. CIST: I want to ask you one question as an expert in such matters as I think you are qualified as such, and that is with reference to the volume of business actually taken by the water lines from New York and eastern points via ocean to New Orleans and thence up the river and what effect upon that volume would it have, if you were to materially raise your rate to Memphis?

Mr. POPE: Excepting, perhaps, first and second and third class freight it would be wholly absorbed by the water lines. In advance I feel sure that fourth, fifth, and sixth class business would go entirely by the water lines.

Mr. CIST: Then there is actual water competition to that point?

Mr. POPE: Yes, sir; there are two steamers per week of very large capacity from New York.

Mr. CIST: Now, does the same remark apply to what is known as the Valley road from New Orleans to Memphis? Is it not true

that but for the fact that the Valley road meets the water-route rate, that the water route would take all the business.

Mr. POPE: Yes, sir; it is compelled to meet that water rate to get any business.

Com'r MORRISON: Does this close the testimony, gentlemen?

Mr. BAXTER: We would like to have it understood whether or not, from the nature of the circumstances and from that fact that it was impossible for Mr. Knox to be here today, we can file interrogatories or take the deposition of Mr. Knox, who lives right at Nashville, and knowing of his personal knowledge of the river trade there; and we would like also to take testimony at Memphis on the same point.

Mr. MOON: If your honors please, we certainly object to anything of that sort. We understand that this commission, as a matter of course, are very liberal in allowing testimony to be taken. Still, I understand that this is a court, and not three gentlemen traveling about the country and inquiring about the will of the railroads or boards of trade. You sit in court and hold court according to rules of law and evidence, and I take it that this court, after the parties have been notified for a year, after all the answers have been filed and all the issues made, that with all the means in their power to bring their witnesses here, and with the power that this court has to bring them, will not now, after the case has been closed and the gentlemen see the probable effect of this testimony, permit
375 them to go out and search for further proof on this issue. I take it, your honors will proceed to the determination of this case as any other court would, and I have never heard of a case where depositions could be taken when the case had reached this stage.

Com'r MORRISON: Mr. Baxter, where is your witness? Could he not come over here in the morning?

Mr. CLARKE: I have a letter from him this morning saying that it is impossible to leave at this time, but he does not say when he could leave. The assistant general freight agent, who knows some of the facts, is here, and I propose to examine him. If the commission thinks it necessary to have Mr. Knox here, I will wire him. There is a train on which he can come.

Com'r BRAGG: That is a matter for you to determine. You know the decisions of the commission on the subject. The commission suggested these features in order that there may be no excuse about evidence not being introduced that the parties have.

Mr. CLARKE: Then I will wire him to come here.

JOHN A. CONNOR, a witness on behalf of the respondents, having been duly sworn, testified as follows:

Direct examination:

Mr. CLARKE: I will ask you to state to the court what office you hold in the Nashville, Chattanooga and St. Louis railway?

Mr. CONNOR: Assistant general freight agent.

Mr. CLARKE: What is the eastern terminus of that road's line? Does it go beyond Chattanooga or stop at Chattanooga?

Mr. CONNOR: It stops at Chattanooga.

Mr. CLARKE: I will ask you to state whether or not this road carries freight from eastern points to Chattanooga or carries it any part of the way.

Mr. CONNOR: No, sir.

Mr. CLARKE: You do not participate at all in carrying any freight from eastern points to Chattanooga?

Mr. CONNOR: No, sir.

Mr. CLARKE: You participate in it only when it is destined to Nashville?

Mr. CONNOR: That is all.

Mr. CLARKE: State, if you know, if your company has anything to do in fixing the rate under which it hauls to Nashville.

376 Mr. CONNOR: No, sir; it does not. We take the trunk-line rates to Louisville and add certain arbitraries from Louisville to Nashville.

Mr. CLARKE: You take the trunk-line rates to Louisville and certain arbitraries fixed by the Louisville & Nashville road to Nashville?

Mr. CONNOR: Yes, sir.

Mr. CLARKE: The rates fixed through here are the same as those via Louisville?

Mr. CONNOR: Yes, sir.

Mr. CLARKE: That governs the rates this line has to fix?

Mr. CONNOR: The same total of rates through Chattanooga as via Louisville.

Mr. CLARKE: State, if you know, on what basis the Louisville rates are fixed from Louisville to Nashville, or from the termini of the trunk line as you call them?

Mr. CONNOR: They are fixed as high as they think they can hold them and get the business as against the river.

Mr. CLARKE: I will ask you to state how long boats work on the river, what part of the year.

Mr. CONNOR: Boats work from Paducah, Kentucky, to Nashville—three boats a week for nine months in the year.

Mr. CLARKE: Do they carry freight to Nashville?

Mr. CONNOR: Yes, sir.

Mr. CLARKE: In considerable amount?

Mr. CONNOR: A very considerable amount; yes, sir.

Mr. CLARKE: And the rate is what the trunk-line rate is to Louisville plus the rate fixed for competition with river?

Mr. CONNOR: Yes, sir.

Mr. CLARKE: Do you know the facts to be that way?

Mr. CONNOR: Yes, sir.

Mr. CLARKE: I will ask you to state, whether or not, if the Louisville people should raise the rates from Louisville to Nashville, the traffic it now has would go by the river?

Mr. CONNOR: I think a considerable quantity would.

Mr. CLARKE: Has that been the case in the past?

Mr. CONNOR: Yes, sir.

Mr. CLARKE: And when they lowered it, it brought the freight over the railroad?

Mr. CONNOR: Yes, sir.

Mr. CLARKE: And that is the reason the railroad is carrying the amount it does now?

Mr. CONNOR: Yes, sir.

377 Mr. CLARKE: I will ask you to state if it is a fact that when the railroad carries it at the same price from Louisville and other terminal points to Nashville, at the same rate as the river, whether it gets the freight because it delivers it quicker.

Mr. CONNOR: Yes, sir; the railroad gets the business because it delivers it more promptly.

Mr. CLARKE: So that it is preferred to ship over the railroad, the rates being equal, on account of the shortness of the time?

Mr. CONNOR: Yes, sir.

Mr. CLARKE: That is all.

Mr. BAXTER: The boats which run from Paducah to Nashville make connection with other boats from Louisville and Cincinnati?

Mr. CONNOR: Yes, sir.

Mr. BAXTER: It makes connection with a line of boats on the Ohio?

Mr. CONNOR: Yes, sir.

Mr. CIST: The Ohio river is open almost constantly, is it not?

Mr. CONNOR: Yes, sir.

Cross-examination:

Mr. CONNOR: You say that you know that the Louisville & Nashville railroad make their rate from Cincinnati and not from Louisville—up from Cincinnati to Nashville and base it upon the river rates?

Mr. CONNOR: (Witness:) No, sir; I said from Louisville to Nashville.

Mr. CONNOR: Who makes the rate from Cincinnati?

Mr. CONNOR: (Witness:) The L. & N.

Mr. CONNOR: The same that makes it from Louisville to Nashville?

Mr. CONNOR: (Witness:) But the rates from eastern cities to Nashville are made by taking trunk-line rates to Louisville and adding the arbitraries fixed by the L. & N. road.

Mr. CONNOR: Are you consulted in making rates as to the Nashville and Chattanooga road?

Mr. CONNOR: (Witness:) No, sir.

Mr. CONNOR: Is there anything improper for you to tell me how you know that Louisville & Nashville road base their rates upon the river rates?

Mr. CONNOR: (Witness:) We know the rates from New York to Louisville and Cincinnati, and then we are furnished with figures from Louisville to Nashville and from Cincinnati to Nashville by the general freight agent.

378 Mr. CONNOR: But you swore just now that you knew that they based them upon these river rates; that they would make the arbitraries. You swore you knew that.

Mr. CONNOR: (Witness:) I have information here from the captain of the line of boats running from Paducah to Nashville stating what his rate is from Louisville and Cincinnati.

Mr. CONNOR: But you do not know that that is what influences the Louisville & Nashville road in fixing those rates? You have no personal knowledge on that subject, only information and letters?

Mr. CONNOR: (Witness:) I do not know that, except I know it like anything else. That is the way they fix the rates. They tell us so.

Mr. CONNOR: That is your information?

Mr. CONNOR: (Witness:) Yes, sir.

Mr. CONNOR: Do you know what the first-class rate is from New York to Nashville?

Mr. CONNOR: (Witness:) It is 91 cents.

Mr. CONNOR: From New York to Cincinnati?

Mr. CONNOR: (Witness:) 65 cents.

Mr. CONNOR: And that would leave how many cents from Cincinnati to Nashville?

Mr. CONNOR: (Witness:) 26 cents.

Mr. CONNOR: Is not that 26 cents the same rate per ton per mile as the rate from the city of New York to the city of Nashville, and therefore not an arbitrary but a *pro rata?*

Mr. CONNOR: (Witness:) It is an arbitrary, as I understand it. It may figure out the same rate per ton per mile.

Mr. CONNOR: But the rate of 1.8 cents per ton per mile will give a rate of 91 cents. You are not positive it is an arbitrary, are you?

Mr. CONNOR: (Witness:) It can be classed either one. It can be classed as an arbitrary or a *pro rata.*

Mr. CONNOR: It would not be legitimately an arbitrary if it were a *pro rata?*

Mr. CONNOR: (Witness:) If it were prorated it would have to figure out exactly 26 cents, which is not likely. My understanding is that it is a regular fixed arbitrary.

Mr. CONNOR: You tell the court, then, that you thought it was an arbitrary, but that you are not certain.

Mr. CONNOR: (Witness:) They were furnished to me by the officials of the Louisville & Nashville road as an arbitrary.

Com'r MORRISON: You said there was one line of boats which carried to Paducah and then another line up the Cumberland river?

379 Mr. CONNOR: (Witness:) There is a regular line of three boats per week from Paducah to Nashville up the Cumberland and then there are boats coming down the Ohio from Cincinnati and transfer at Paducah.

Mr. CONNOR: There are three months of the year when they cannot run?

Mr. CONNOR: (Witness:) Yes, sir.

Mr. CONNOR: And three months of the year they cannot ship by river to Nashville?

Mr. CONNOR: (Witness:) Yes, sir.

Mr. CONNOR: So they can run only 9 months?

Mr. CONNOR: (Witness:) Yes, sir.

Mr. CONNOR: Do you know of your own personal knowledge that there is much New York, Boston and Philadelphia freight that comes to Nashville via Cincinnati, the Ohio river to Paducah and then up the Cumberland river?

Mr. CONNOR: (Witness:) I do not think there is any right now because the proportions charged by the L. & N. road will not permit business to come that way. But I think it would come that way if the rate were advanced.

Mr. CONNOR: To the best of your information there is no freight coming from eastern points to Nashville?

Mr. CONNOR: (Witness:) Not right now by reason of the fact that the proportions charged by the Louisville & Nashville road shut the boats out.

Mr. CONNOR: And so far as you know that rate is the *pro rata* of the entire rate?

Mr. CONNOR: (Witness:) Of course, that I cannot say.

Com'r BRAGG: What three months of the year is it the boats do not come?

Mr. CONNOR: (Witness:) June, July and August.

Com'r BRAGG: You said awhile ago that the freight was considerable?

Mr. CONNOR: (Witness:) Yes, sir; they do a large business in general merchandise from Cincinnati, Louisville and St. Louis proper to Nashville. They are not doing any eastern business now on account of the rates fixed by the Louisville & Nashville railroad.

Com'r BRAGG: How long is it since they were doing eastern business?

Mr. CONNOR: Ever since the rates from the East to Nashville have been constructed as they are now.

Com'r BRAGG: How long ago is that?

Mr. CONNOR: (Witness:) Several years ago.

Com'r BRAGG: About how many years?

Mr. CONNOR: (Witness:) From the East to Nashville they have not done any business for eight or ten years; I think those
380 proportion- have been in effect probably that long.

Mr. CONNOR: You said there was about three boats a week. How many car-loads of freight will one of those boats carry, to the best of your information?

Mr. CONNOR: (Witness:) That would depend upon the class of freight.

Mr. CONNOR: What would be the tonnage? How many car-loads of 40,000 pounds to the car?

Mr. CONNOR: (Witness:) I do not know how much exactly.

Mr. CONNOR: Would it bring five car-loads?

Mr. CONNOR: (Witness:) More than that, I think.

Mr. CONNOR: Probably six or eight?

Mr. CONNOR: (Witness:) Six or eight, I would think.

Mr. CONNOR: That is eighteen car-loads a week. How many car-loads of freight do you think would come into Nashville from Cincinati and Louisville by rail in the same time?

Mr. CONNOR: (Witness:) Probably the business into Nashville by rail——

Mr. CONNOR: Answer my question. How many car-loads of freight would come by rail during the same time—one week—from the cities of Cincinnati and Louisville into the city of Nashville?

Mr. CONNOR: (Witness:) I do not know that I can answer that question. You want to know how many car-loads of freight would come into Nashville all-rail from Cincinnati and Louisville during that week?

Mr. CONNOR: Yes, sir.

Mr. CONNOR: (Witness:) Well, I suppose the ratio would be about 10 to 90.

Com'r MORRISON: That is a matter of calculation, then?

Mr. CONNOR: (Witness:) Yes, sir.

Mr. CONNOR: Does not one hundred car-loads come by rail?

Mr. CONNOR: (Witness:) More than that.

Mr. CONNOR: 200?

Mr. CONNOR: (Witness:) No, sir.

Mr. CONNOR: Not 200 car-loads a day?

Mr. CONNOR: (Witness:) Are you taking the entire business?

Mr. CONNOR: The same class of business as would come by river as would come by rail. What I wish to show is that the competition of the river is not of any consequence when compared with the vast volume of business done to that city.

What proportion of the business of Nashville comes by river now, of eastern freight?

381 Mr. CONNOR: (Witness:) None.

Mr. CLARKE: You state that the rates from Louisville and Cincinnati were called arbitraries because they were fixed on the river basis instead of the prorate basis, and that prior to the reduction of the rate on the Louisville system by which it made these arbitraries, that a considerable portion of that trade went by river?

Mr. CONNOR: (Witness:) Yes, sir.

Mr. CLARKE: Well, I will ask you to state to the court if the number of boats that are on the river is not in proportion to the amount of business they can get and that if the Louisville's arbi trary were raised and more business thrown to the river if more boats would not come on the river?

Mr. CONNOR: (Witness:) Yes, sir; if the amount of business on the river was increased more boats would come to the river.

Mr. CONNOR: Do you not know whether these are arbitraries *are* prorates?

Mr. CONNOR: (Witness:) I tried to explain that a while ago that they told us they were arbitraries and they were called arbitraries.

Mr. LAWTON: Do you know what proportion of the business from eastern seaboard points to Nashville comes through Chattanooga?

Mr. CONNOR: (Witness:) Taking all the routes via Cincinnati to Nashville, I suppose over 60 per cent. comes through Chattanooga.

Mr. LAWTON: Then 40 per cent. comes by the trunk lines?

Mr. CONNOR: (Witness:) That would be my idea about it.

Mr. LAWTON: Do you know whether or not in making rates by the trunk lines to such a point as Louisville, from which point an arbitrary or proportion to Nashville is added—do you know whether water competition enters into that rate—the competition by canal and lake lines—in fixing the trunk-line rates to Louisville. That is, what are the trunk-line rates based upon?

Mr. CONNOR: (Witness:) As I understand the construction of eastern rates they take New York and Chicago as a basis.

Mr. LAWTON: All rates are made upon a percentage of the Chicago rates?

Mr. CONNOR: (Witness:) Yes, sir.

Mr. LAWTON: What are Chicago rates controlled by?

Mr. CONNOR: (Witness:) Water competition.

Mr. LAWTON: They have an all-water route to Chicago from New York the whole way?

382 Mr. CONNOR: (Witness:) Yes, sir.

Mr. LAWTON: Does the New York Central & Hudson River handle business between New York and Chicago.

Mr. CONNOR: (Witness:) I am not so well posted as to rates leading out of New York.

Mr. LAWTON: They are all based upon a percentage of the Chicago rates?

Mr. CONNOR: (Witness:) Yes, sir.

Mr. CLARKE: I believe you said that of all the freight going down from Louisville to Nashville that the boats carried about ten per cent.?

Mr. CONNOR: (Witness:) From Louisville and Cincinnati they handle quite a large volume of business.

Mr. CONNOR: But you do not mean that they carry any freight from the East?

Mr. CONNOR: (Witness:) No, sir.

Com'r MORRISON: Is that all, gentlemen?

Mr. CLARKE: Have you read the letter of Mr. Knox referred to by Mr. Fitzgerald explaining this matter?

Mr. CONNOR: (Witness:) Yes, sir.

Mr. CLARKE: I ask to have this put in the record as it is explanatory and may be of use to the commission.

(The letter referred to is marked Exhibit No. 7.)

Mr. CIST: Mr. Connor, you handle Nashville business from Chattanooga—that is, business coming from New York to Nashville—you get it from Chattanooga? What proportion of that business comes from eastern and Atlantic or other roads leading up from Savannah?

Mr. CONNOR: (Witness:) Well, I am not familiar enough with that to answer.

Mr. CIST: Do you get a large proportion or a small proportion or a fair proportion that way?

Mr. CONNOR: (Witness:) The business runs from about north first, and west next, and then probably from Savannah.

Mr. CIST: Is it a fair proportion?

Mr. CONNOR: (Witness:) Yes, sir. So far as percentage is concerned I do not know.

Mr. CLARKE: I will state before closing that I will wire for Mr. Knox and if he can get here we will have him.

Mr. BAXTER: I call Mr. T. A. Davant.

T. A. DAVANT, a witness on behalf of the respondents, having been duly sworn, testified as follows:

Direct examination:

Mr. BAXTER: You are the general freight agent of the East Tennessee road?

383 Mr. DAVANT: Yes, sir.

Mr. BAXTER: Have you any connection with the Memphis and Charleston railroad?

Mr. DAVANT: Yes, sir.

Mr. BAXTER: Who is your assistant freight agent on that road?

Mr. DAVANT: Mr. J. S. Davant.

Mr. *Davant:* Have you at any time lived at Memphis?

Mr. DAVANT: Yes, sir, I lived there for nine months.

Mr. BAXTER: How long since was that?

Mr. DAVANT: Four years ago.

Mr. BAXTER: You are frequently in Memphis to attend to business there?

Mr. DAVANT: Yes, sir.

Mr. BAXTER: Will you please state to the commission, bearing upon the question of whether there is water competition at Memphis, whether that competition controls rates from the East to Memphis?

Mr. DAVANT: The rates via New Orleans from the East to Memphis have always been a source of a great deal of trouble to us. There is a large part of the dry-goods business, such as heavy goods, blankets, domestics and things of that kind which are shipped by the large wholesale houses at Memphis, such as Lowens & Bro., Moore & Co., and others by way of New Orleans at rates which we have never been able to meet.

The rates today from New York to Memphis by our line, for instance, via Norfolk are $1.00, 85, 65, 45, 38, 35; via New Orleans and river 65, 60, 45, 33, 28, 27. These rates are agreed upon by the agency in New York and this gross traffic goes by way of New Orleans. We do not control it at all. That also includes cotton goods and staple groceries and such things as that, which in Memphis amounts to a very large tonnage. Of course, I have no statements to show specifically the amount of the tonnage which comes via New Orleans but I think we could get them for the commission. That it is large there is no doubt. The fact is, it is the higher class

of goods only that we handle and we do that because the time is better and the interest is somewhat less by our line than via New Orleans.

Mr. BAXTER: Do you know that there is at Memphis, at all seasons of the year, boats plying the Mississippi river between New Orleans and Memphis engaged in carrying traffic of this kind?

Mr. DAVANT: Yes, sir; those boats are regularly in the trade—three or four lines.

Mr. BAXTER: Do you think you can be able to furnish the commission the amount of that traffic?

384 Mr. DAVANT: There is only one way we can get that information and that is from the receivers of the goods at Memphis and I think it very probable we can get it from them. Of course they have their receipts showing the routes by which the goods were shipped.

Mr. BAXTER: There is no way of getting it officially?

Mr. DAVANT: No, sir.

Mr. CLARKE: Could you not show the number of lines of steamers and the number of steamers in the lines, number of trips they make, etc.?

Mr. DAVANT: There will be no difficulty about that.

Mr. BAXTER: Is that an actual and present force at all times, the competition between the various carriers that go there?

Mr. DAVANT: It is more savage right now than it has been for some time.

Mr. BAXTER: Do you know it prevents you from getting business and controls your rates to the extent you have named?

Mr. DAVANT: Yes, sir.

Cross-examination:

Mr. CONNOR: When you say there is water competition what do you actually mean by the word "competition"?

Mr. DAVANT: I mean there is a river from New Orleans in the first place, and——

Mr. CONNOR: The competition that occurs between you, what do you mean by that competition?

Mr. DAVANT: I mean by that, working for the same business. Very frequently the boats get it and we do not.

Mr. CONNOR: Suppose you carry for the same rate, would that be competition?

Mr. DAVANT: That would be competition.

Mr. CONNOR: And then if you agreed upon regular rates, a difference in a water rate and the all-rail rate, you would call that competition but still you would be agreed on those rates?

Mr. DAVANT: The agreement is regulated by it.

Mr. CONNOR: Then it is a question of who can get the most traffic. As I understand the question, you and the agents of the steamship companies agreed upon certain differentials and that you are not cutting their rates?

Mr. DAVANT: I went further than that. I stated that on the lower class of goods we did not make any effort to get it.

Mr. CONNOR: But still it is not a matter of cutting each other's rates. You agree to give them a differential?

385 Mr. DAVANT: Yes, in order to avoid the cutting of rates.

Mr. CONNOR: There is no competition but agreed differentials by which both are benefited?

Mr. DAVANT: In the absence of such an agreement there would be competition that would be ruinous to both parties.

Mr. CONNOR: You have agreed upon those differentials and that actually today there is no controversy as to rates to Memphis, but the controversy is as to who will get the most tonnage?

Mr. DAVANT: Let me explain that. The rate to Memphis is $1.00 and that is as high as it can be made; if we go higher than that we get no business at all.

Mr. CONNOR: That is, you and the boat would not agree?

Mr. DAVANT: The boats come and say to us—we are willing to carry business to Memphis for so much and we will not go below that, unless you force us to do it. We say we will agree to maintain our rates so much higher than yours if you will give us some business of the higher classes.

Mr. CONNOR: Then it is very clear that you and the steamship companies have agreed upon certain differentials and that you are not cutting each other's rates but are simply working for the tonnage?

Now, as to earnings. Comparing the carriage of the heavy goods by the steamships and your carrying the high-class goods on quicker time, do not you make more money than the steamships?

Mr. DAVANT: Yes, sir.

Mr. CONNOR: I mean in total earnings. Do you not get more money out of the freight to Memphis?

Mr. DAVANT: We carry at $1.00 and the boats at 65 cents.

Mr. CONNOR: Now, suppose both of you earned $100,000—gross earnings—which would make the most profit?

Mr. DAVANT: I could not answer that question.

Mr. CONNOR: Do you or do you not find a profit in the hauling of Memphis freight at the rates you do? Do you find a profit in the hauling of that freight?

Mr. DAVANT: Mr. Connor, you have had experience enough to know that the profit in transporting freight is a pretty hard thing to arrive at. On general principles we assume that there is a margin of profit in the rate of $1.00.

Mr. CONNOR: Tell me whether or not there is profit in it?

386 Mr. DAVANT: I have answered in a general way. If we did not think there was some profit in it we would not do it.

Mr. CONNOR: There is a profit?

Mr. DAVANT: Yes, sir; there is a profit.

Mr. BAXTER: This class of goods upon which you refuse to compete with the boats at all, you could not carry at their price and realize any profit, could you, and therefore you do not attempt to carry it?

Mr. DAVANT: Yes, sir.

Mr. BAXTER: Is it not the presence of that competition, whatever its nature, that forces you to put the rate at $1.00?

Mr. DAVANT: Yes, sir.

Mr. CONNOR: Do you not frequently carry empty cars to Memphis to load them back?

Mr. DAVANT: We haul them part of the way.

Mr. CONNOR: But you know that it is the history of all railroading that you have to haul cars empty?

Mr. DAVANT: It is the history of the Memphis and Charleston road that the tonnage is pretty well balanced.

Com'r MORRISON: We will now adjourn until 10 o'clock tomorrow.

Accordingly at 10 minutes past 5 p. m. the commission adjourned.

KNOXVILLE, TENN., *Dec'r* 31*st*, 1890.

Interstate Commerce Commission, Washington, D. C.

GENTLEMEN: I wish to add to my testimony given in the case of The Chattanooga Board of Trade *vs.* East Tennessee, Virginia & Georgia Railway Company *et al.* in the matter of the following question and answer:

I was asked by Mr. Baxter this question: "Do you think you can be able to furnish the commission the amount of that traffic?" I answered: "There is only one way I can get that information, that is, from the receivers of goods at Memphis. I think it very probable I can get it from them." I have from several of the leading merchants of Memphis information of the following purport:

B. Lowenstein & Bros., (wholesale and retail dry-goods merchants), whose freight bills will probably aggregate sixty or seventy thousand dollars per annum; that fully four-fifths of their business come to Memphis by way of New Orleans from eastern points.

387 From George Arnold Grocery Co., that over three-fourths of their freight from eastern points comes by way of New Orleans.

Lemmon & Gale Co., that the great bulk of their goods for the past four or five years from eastern points has come by the water route because better rates were obtained than by the Virginia & Tennessee air line.

From the Oliver Finnie Grocery Co., that one-third of their business from eastern points for the past five or six years has come by way of New Orleans of a lower rate of freight.

From Brooks & Cole (merchandise, brokers & manufacturers' agents), that fully one-half of their shipments from eastern points come to Memphis via New Orleans.

From Porter, McRae & Co. (wholesale grocers & commission merchants); that about one-half of their freight from eastern points has come by way of New Orleans, Mobile and Savannah because of lower rates than via all rail.

From the superintendent of the Anchor Line steamers; that for four years past this line has carried from twelve to fifteen hundred

tons of freight per annum from eastern cities by way of New Orleans, all water.

I believe the foregoing, although gathered in an unofficial way or from unofficial statistics, is a fair representation of the actual condition of the water competition at Memphis, as showing that the rail routes are controlled in their rates by the presence of the actually compelling force of this water competition.

Respectfully, &c.,

(Signed) T. A. DAVANT,
General Freight Agent, E. T., V. & G. R'y Co.

Subscribed and sworn to before me, this 1st day of January, 1890, at Knoxville, Knox county, Tennessee.

(Signed) DAN'L KELLY,
Notary Public.

Interstate Commerce Commission.

OFFICE OF THE SECRETARY,
WASHINGTON, *January* 10, 1891.

G. C. Connor, Esq., secretary board of trade, Chattanooga, Tenn.

DEAR SIR: Herewith enclosed please find statement furnished by T. S. Davant, general freight agent, East Tennessee, Virginia & Georgia Railway Company, to be appended to his evidence in your case. 388

Very respectfully, ——, *Secretary.*

Second day.

The commission met pursuant to adjournment at 10 o'clock a. m.

Present: Commissioners and counsel heretofore noted.

Com'r MORRISON: Gentlemen, are you ready to proceed this morning? Mr. Baxter, I believe the case was with you.

Mr. BAXTER: I will call Mr. George R. Knox.

GEORGE R. KNOX, a witness on behalf of the respondents, having been duly sworn, testified as follows:

Direct examination:

Mr. BAXTER: Are you general freight agent of the Nashville & Chattanooga road?

Mr. KNOX: Yes, sir.

Mr. BAXTER: How long have you occupied that position?

Mr. KNOX: Four years.

Mr. BAXTER: You were connected with the road before that?

Mr. KNOX: Yes, sir.

Mr. BAXTER: Where do you reside?

Mr. KNOX: In Nashville.

Mr. BAXTER: Have you lived there during the period since you have been connected with the road?

Mr. KNOX: Yes, sir.

Mr. MAXTER: Are you acquainted with the basis upon which rates to Nashville are made as compared with Chattanooga?

Mr. KNOX: Yes, sir.

Mr. BAXTER: Please state to the commission the basis upon which rates are made and the reasons that control the making of them.

Mr. KNOX: You refer to rates from eastern cities?

Mr. BAXTER: Yes, from New York, Philadelphia, Boston, and Baltimore.

Mr. KNOX: The rates from eastern cities to Nashville are based on the trunk-line rates to the Ohio River points through Pittsburg, Cincinnati, Louisville, Evansville, or Cairo, as the case may be.

389 Mr. BAXTER: Do all those points have the benefit of water competition in the making of trunk-line rates?

Mr. KNOX: The rates from eastern cities to Ohio River points are not controlled by water competition. Business by the trunk lines is done upon the mileage basis.

Mr. BAXTER: How are the rates to Nashville made?

Mr. KNOX: To Nashville the rates are made by adding certain rates charged by the Louisville & Nashville from Cincinnati to Nashville. Those rates are made by the Louisville & Nashville road. They necessarily have to consider in fixing those rates the rates by river in competition with them. The routes through Chattanooga then work the same rates as the routes through Louisville.

Mr. BAXTER: Would it be possible to charge a higher rate to Nashville?

Mr. KNOX: The lines working through Chattanooga, might, of course, raise their rates but it would result in those roads losing all of that business.

Mr. BAXTER: What is the water competition at Nashville—is it actually present?

Mr. KNOX: Many years ago, in fact to go back a little in general history, Nashville had through lines of boats to New Orleans, Pittsburg, St. Louis, Memphis, Cincinnati, Evansville and Louisville before the day of railroads. As a boy I have been there and have seen large 1,500-ton steamers lying alongside their docks. In fact, when the Nashville & Chattanooga road was constructed in 1849 and 1850 it brought its rails by river. Everything was brought by river.

Since the war we have had several struggles, at various times with the river competition. Some years after the war there was a through line of boats from Cincinnati. By constant struggling this through line of boats was kept up for a long time, but those through packets gradually dropped out and other lines took their place. After that we did not have so much trouble but constantly kept adjusting our rates so as not to offer inducements to use the river. Although within the last two years we have begun to have considerable trouble from St. Louis to Nashville on such things as stoves, white lead, etc. The boats have cut the rates half in two sometimes. Then there are shipments by water

of fence wire, furniture, nails, and all sorts of miscellaneous goods from Ohio River points and they make the rates so low that the roads do not try to meet the competition but they are letting it come by the river rather than reduce rates. Of course there is a limit beyond which we cannot go.

390 Mr. BAXTER: You say you adjust the rates with a view to keep out river competition as far as possible?

Mr. KNOX: As far as possible that has been our intention, but during the last two years they have taken a fresh start in some way.

Mr. BAXTER: State if you know of any St. Louis house that has moved his establishment to Nashville.

Mr. KNOX: The Collier White Lead and Oil Company from St. Louis have established a branch house in Nashville, and they ship to Nashville by river and make that their distributing point to the South, on account of the low river rates

Mr. BAXTER: Do you know anything about the route of business from eastern points that is affected by water?

Mr. KNOX: My chief clerk a day or two ago heard that friends of his in Nashville were bringing goods by water. They would bring them to Pittsburg and then by river from there.

Mr. BAXTER: Is there any difference in the water transportation to Nashville now than there was before the war, before the railroad went in there? Is there not the same condition of water as there was there then?

Mr. KNOX: About the same, but the Government has done a considerable amount of work below Nashville in dredging the channel and so forth.

Mr. BAXTER: There has been Government work which has increased the facilities and not decreased it?

Mr. KNOX: Yes, sir.

Mr. BAXTER: Do you know what the river rates are from Cincinnati and Louisville to Nashville, all water?

Mr. KNOX: The general freight agent of the Cumberland line of boats informs me that on general merchandise they are charging from Cincinnati and Louisville to Nashville 15 cents, and from Evansville to Nashville 10 cents.

Mr. BAXTER: What is the railroad tariff as compared with that?

Mr. KNOX: It is a good deal higher and as a consequence I think that is the reason why so much of the merchandise business is coming by river. The rail rates are too high as compared with the boats to hold the business.

Mr. BAXTER: Do you know how many different routes there are from the East through Chattanooga to Nashville? Name them.

Mr. KNOX: There is the Virginia, Tennessee & Georgia or the line through Norfolk; the Great Southern Dispatch; the Piedmont air line through Paint Rock and Chattanooga; the Great Southern freight line of Savannah, and a similar line via Charleston.

391 Mr. BAXTER: Then, if the rate from eastern points to Nashville were raised, would it involve all those southern lines

going out of that traffic and throwing it to the trunk lines coming in the opposite direction?

Mr. KNOX: That is my opinion, but I could only tell by experience, I think that is the way it would work.

Mr. BAXTER: If they do not carry them for 91 cents through Chattanooga they would not be able to carry at all on the present basis of rates?

Mr. KNOX: Not so long as 91 cents is the rate by the trunk lines, and the Louisville & Nashville road.

Mr. POPE: I would like to ask if all these lines through Chattanooga abstained entirely in quoting rates from eastern cities to Nashville, if, in your judgment, the rates to Nashville would be advanced by the trunk lines?

Mr. KNOX: I do not think so.

Mr. POPE: Your experience authorizes you to arrive at that conclusion?

Mr. KNOX: Yes, sir.

Mr. POPE: The official classification is applied to Nashville business?

Mr. KNOX: Yes, sir, west bound.

Mr. POPE: And business to Chattanooga is worked on the Southern Railway & Steamship Association classification?

Mr. KNOX: Yes, sir.

Mr. POPE: You have noticed marked differences and dissimilarities in those two classifications I presume?

Mr. KNOX: Yes, sir.

Mr. POPE: Suppose that the classifications were uniform, and traffic was worked from eastern cities to Chattanooga on one classification, would not a great many of irregularities in rates be eliminated in your judgment?

Mr. KNOX: To the extent that they would overcome discrepancies in trunk-line rates to Ohio River points and Southern Railway classification to southern points. I would like to state that the real underlying cause of this trouble is due to the fact that the trunk-line rates are made on a very much less per ton per mile basis than rates on the southern roads are made owing to the fact that the trunk-line tonnage is very much greater than the tonnage of the southern roads. Necessarily, therefore, when those two systems of making rates from the East into this country—when they come together, there must be a break, it is unavoidable.

Owing to these boats on the Ohio, from Louisville to Nashville, the Louisville & Nashville road groups Nashville with Ohio River points, or western points, while the southern roads have grouped with southern points.

392 The only radical cure would be for the southern lines to adopt the same per ton per mile basis as the trunk lines, but this is not practicable. Another solution would be for the trunk lines to advance their rates to the southern basis, but they would not think of doing that. The lake and canal competition would not permit of that.

It seems to me that this particular embarrassment must occur in

southern Kentucky and Tennessee. I do not see how it is possible to avoid a break somewhere.

Mr. DANIELS: Is that your argument or testimony?

Mr. KNOX: I am giving a reply to a question asked me.

Mr. POPE: I would like to ask for your knowledge as to how much eastern traffic—how much of eastern commodities is Nashville sending into the territory south of Nashville, say within 50 miles of Chattanooga, or 100 miles? In eastern cities' commodities?

Mr. KNOX: I did not quite catch your question.

Mr. POPE: About how much business do you consider Nashville is doing in eastern cities' commodities in a territory within 100 miles or less of Chattanooga?

Mr. KNOX: I have never seen any statistics on that question.

Mr. POPE: Your road would naturally handle that business?

Mr. KNOX: Yes, sir. Recently some of the Nashville merchants told me that they could not meet Chattanooga business. But I have not looked into the matter. I have told them that I gave the same rate from either place for equal distances over our line.

Mr. POPE: Is it not within your experience as a general freight agent that complaints of that kind are relatively made from merchants in different markets?

Mr. KNOX: The Nashville merchant selling towards Louisville and Evansville complains that he operates at a disadvantage.

Mr. POPE: You have the same complaint in regard to St. Louis?

Mr. KNOX: Yes, sir.

Mr. POPE: Chattanooga complains naturally that Nashville shuts her out?

Mr. KNOX: Chattanooga has not made such complaint to our road. I have not had my attention drawn to it anyway. As I said in making rates for traffic we make exactly the same rate for the same distance from either end of our line. Chattanooga has the same rate for 100 miles as Nashville, and, therefore, either of them has
393 an equal opportunity to do business. Chattanooga, perhaps, knowing that, has made no complaint that I know of.

Cross-examination:

Mr. CONNOR: On that last point before it gets out of your mind. Do you affirm that the rate to a place like Jasper would be the same on eastern freights to Nashville merchants, plus the local, that it would be to Chattanooga at $1.14 plus the local to Jasper?

Mr. KNOX: We do not make the through rates from eastern cities to Nashville.

Mr. CONNOR: If you add the local to Jasper to the New York rate; which would be the higher?

Mr. KNOX: I have not figured that.

Mr. CONNOR: But a moment ago you stated that they were no higher.

Mr. KNOX: That was not my statement. I was speaking of a Nashville merchant who said he could not compete at the Sequatchie river.

Mr. CONNOR: The remark you made then has no reference to eastern freight, but to Chattanooga local freights?

Mr. KNOX: I was speaking then of local rates; that was in reply to a question as to Chattanooga making complaint.

Mr. CONNOR: You say that rate to Nashville from eastern seaboard points is made by adding the rate over the Louisville & Nashville road to the trunk-line rate through Cincinnati or Louisville.

Mr. KNOX: Yes, sir.

Mr. CONNOR: Do you know what the rate is on first-class freight from the city of New York to Cincinnati?

Mr. KNOX: It is 65 cents.

Mr. CONNOR: And what is it from New York to Nashville.

Mr. KNOX: 91 cents.

Mr. CONNOR: What is it from Cincinnati to Nashville?

Mr. KNOX: I do not recall that.

Mr. CONNOR: If it is 65 cents to Cincinnati, then it will leave 26 cents from Cincinnati to Nashville?

Mr. KNOX: It is 91 cents over the trunk lines. The trunk-line rate to Louisville is 75 cents, and they add the rate to Nashville to that.

Mr. CONNOR: That would be 26 cents to Nashville from Cincinnati, or 16 cents from Louisville?

Mr. KNOX: They make it by adding 16 cents to the trunk-line rate to Louisville.

394 Mr. CONNOR: The difference is 26 cents from Cincinnati?

Mr. KNOX: Yes, sir.

Mr. CONNOR: And that would be the Louisville & Nashville rates?

Mr. KNOX: That would depend upon how they divide that. It might figure 26 or 25½ cents. Practically they would get that.

Mr. CONNOR: Do you know how much per ton per mile a rate of 91 cents from the city of New York to Nashville would be?

Mr. KNOX: By what route?

Mr. CONNOR: By that route—by the trunk line and the Louisville & Nashville.

Mr. KNOX: I have not figured it out. By that route it does not pass over our road.

Mr. CONNOR: I simply want your information as an expert.

Mr. KNOX: It is nearly a cent a mile.

Mr. CONNOR: Do you know whether or not the 26 cents is the same rate per ton per mile for the distance between Cincinnati and Nashville, as the 65 cents is between the city of New York and Cincinnati?

Mr. KNOX: I do not.

Mr. CONNOR: You do not know it is not so, do you?

Mr. KNOX: No; I do not.

Mr. CONNOR: You do not affirm that the rate from Cincinnati to Nashville is merely an arbitrary with the Louisville & Nashville, do you?

Mr. KNOX: It has been my understanding for many years, that the Louisville & Nashville fixed certain arbitrary rates from Cin-

cinnati and Louisville, which applied to all their eastern connections alike. That is my information. I cannot state it as a fact.

Mr. CONNOR: You do not know that it is not a prorate of the entire rate of freight on the entire mileage?

Mr. KNOX: Well, a moment's calculation would determine that. I do not know it now.

Mr. CONNOR: You do not know that the rate from the city of New York to the city of Nashville, via Cincinnati or Louisville of 91 cents is a prorate of the entire route?

Mr. KNOX: I do not know that.

Mr. CONNOR: You say that the river has had a very controlling influence in your experience in fixing the rate from the city of Louisville to Nashville?

Mr. KNOX: Yes, sir.

Mr. CONNOR: And that if the road were to advance the
395 rate to Nashville that a large portion of the freight would be diverted from its present channels and would go by water.

Mr. KNOX: I think it would.

Mr. CONNOR: Do you know whether the Southern Railway and Steamship Association has ever made a demand upon the Louisville & Nashville to advance rates to Nashville?

Mr. KNOX: I do not now recall anything of the sort; but it may have been.

Mr. CONNOR: Are you certain you do not recollect when any demands have been made to advance the rate?

Mr. KNOX: No, because those demands would not pass through our office.

Mr. CONNOR: As general freight agent of the Nashville and Chattanooga railroad do you not attend the meetings of that association?

Mr. KNOX: I frequently attended them.

Mr. CONNOR: And you have no recollection of ever having heard during those meetings that such a demand was made?

Mr. KNOX: I have not heard of it.

Mr. CONNOR: Have not officially heard of it?

Mr. KNOX: I have heard at times that there were differences between the East Tennessee and the Louisville & Nashville, but as to what the details were has not come to my knowledge.

Mr. CONNOR: The Southern Railway & Steamship Association would know about the river transportation when such matters came up?

Mr. KNOX: Yes, sir.

Mr. CONNOR: And yet you think it is possible that no such demands were made?

Mr. KNOX: No, sir. I said I did not know anything about it. I said it could have been so without my knowing it.

Mr. CONNOR: About this water rate that is so potent to the city of Nashville. How does that water line come from the city of Cincinnati? Tell us the names of the rivers.

Mr. KNOX: Well, the Ohio river runs past Cincinnati to Cairo, and then the Cumberland river passes Nashville.

Mr. CONNOR: How many months of the year can boats run from Cincinnati to Nashville?

Mr. KNOX: I am not so familiar with the Ohio river as I am with the Cumberland river. Usually from eight to nine months in the year, although during the past two years they have been able to run ten or eleven months.

396 Mr. CONNOR: You would feel confident then that they would be able to bring freight nine months in the year?

Mr. KNOX: Of course some years the river is open more than others.

Mr. CONNOR: And for three months out of the twelve months they could not bring freight from Cincinnati and Louisville to Nashville by water?

Mr. KNOX: I do not think they could.

Mr. CONNOR: Would you think then that those rates would control the matter?

Mr. KNOX: Yes, I think so, because it is practicable for merchants who do a large business to make arrangements ahead for carrying their traffic.

Mr. CONNOR: How much freight comes from eastern seaboard points by water to Nashville?

Mr. KNOX: By what, water?

Mr. CONNOR: By the water route you have described.

Mr. KNOX: I think little or none of the eastern business comes that way. But there has been considerable business coming that way originating at Ohio River points.

Mr. CONNOR: From eastern seaboard points is the question we are asking about. How much of that freight is coming over the waterway?

Mr. KNOX: Outside of this queensware business I do not know of any.

Mr. CONNOR: How much has come during the past two years to the best of your information?

Mr. KNOX: So far as I know there is little or none.

Mr. CONNOR: For five years past?

Mr. KNOX: That is probably true for five years. But I would like to add that it is due to the fact that we have tried to keep the rate at a point where they would not use the river.

Mr. CONNOR: Is there any connection between these boats as to carrying freight with the railroads?

Mr. KNOX: There are no contracts with them.

Mr. CONNOR: Is there any connection that would influence them in regard to making rates?

Mr. KNOX: None whatever. Whatever business they bring we charge them our regular rates to Nashville.

Mr. CONNOR: And they made no agreement with you to do certain things as a competing line?

Mr. KNOX: No agreement with us. No agreement at all.

Mr. CONNOR: No understanding?

Mr. KNOX: No.

Mr. CONNOR: They do not under any circumstances
397 feel bound to make a rate because of any understanding with you?

Mr. KNOX: We have no agreed rates with the boats at all.

Mr. CONNOR: They have no trouble in their mind because of any understanding they have with the officers of your roads?

Mr. KNOX: Not that I know of.

Mr. CONNOR: As a general freight agent, and a thoroughly expert one, are there not differentials always agreed upon between water transportation lines and all-rail lines?

Mr. KNOX: Not always; sometimes it is and sometimes not.

Mr. CONNOR: It is general- the case?

Mr. KNOX: No, sir; so far as my observation goes between water carriers and rail carriers there have been many attempts to make arrangements, but they amount to little.

Mr. CONNOR: For instance, suppose a question came up between the all-rail route to Chattanooga from the city of New York and the part-water and part-rail route, would the question of insurance enter into that?

Mr. KNOX: Where an all-rail line competes with a part-water and part-rail line usually agreements are entered into. The rail part of the rail and water line can enforce such an agreement but where one is rail and one water, the all-water carrier is a pretty hard man to hold.

Mr. CONNOR: But where there is a contract for insurance that would be in the nature of a differential would it not?

Mr. KNOX: Yes, sir.

Mr. CONNOR: You are thoroughly acquainted with the figures and volume of business. What percentage, in your judgment, of the entire eastern business to Nashville passes over your road?

Mr. KNOX: That is rather a hard question to answer for the reason that I have never seen any statement of what came in over the other roads. I can only state in a general way. What I state is from general observations. It is variable. Sometimes those large Nashville houses will throw all the business to the northern routes. Recently one of the largest boot and shoe houses in Nashville took offence and threw their business to the Merchants' Despatch. It is very variable. Take the average of the lines through Chattanooga, the southern routes, we probably do about 50 per cent. of that business, probably a little more.

398 Mr. CONNOR: It might be 60 per cent.?

Mr. KNOX: Yes, sir; it is all guesswork.

Mr. CONNOR: You know you have seen this report of the Southern Railway & Steamship Association of tonnage of the various lines to Nashville?

Mr. KNOX: I have not seen that lately, as I have not been a member of that association for some time. While I was a member they sent me the statements.

Mr. CONNOR: Do they give the tonnage?

Mr. KNOX: Yes, sir; and I presume it is about correct.

Mr. CONNOR: And the railroads report to the commissioner?

Mr. KNOX: They take the billing of the lines delivering to us and get the data.

Mr. CONNOR: Except as to clerical errors it is about correct?

Mr. KNOX: I think so.

Mr. CONNOR: You say that 40 per cent. comes over the trunk lines and 60 per cent. over the southern routes of the volume of business from the East to Nashville?

Mr. KNOX: I said that so far as I was able to give opinion from general observation, taking one year with another, I thought probably 50 per cent. came by the southern routes and 50 the other way. It is a good deal of a guess in giving those figures.

Comm'r MORRISON: Do you mean by the southern routes, the routes through Chattanooga?

Mr. KNOX: I mean *the* working through Charleston, Savannah, and Atlantic seaports, passing through Chattanooga.

Mr. CONNOR: That is all.

Mr. CLARK: I believe your road only runs to Chattanooga?

Mr. KNOX: Yes, sir.

Mr. CLARK: You have nothing to do with making rates from eastern points to Chattanooga?

Mr. KNOX: No, sir; nothing at all.

Mr. CLARK: You do not participate in them?

Mr. KNOX: Well, there may be an occasional shipment from the East to Nashville. It pays regular rates from Cincinnati or Louisville. We have practically no amount of that business in to Chattanooga.

Mr. CLARK: Major Connor asked you if you would take the through rate to Nashville plus the local that the amount would exceed a similar through rate to Chattanooga plus the local *firm* Chattanooga; if that was so, it would be due to the through rate, would it not?

399 Mr. KNOX: Yes, sir.

Mr. CLARK: You give each end of the line the same rate?

Mr. KNOX: Yes, sir. We have not made any rates that in any way discriminate against Chattanooga so far as we know.

Mr. CLARK: There has been no complaint?

Mr. KNOX: No, sir. On the contrary the Chattanooga people as far as I have been able to judge are friendly to the N. & C. road. If it had not been for the N. & C. I do not know that there would have been much Chattanooga.

Mr. CONNOR: Do you ever bring any freights from eastern seaboard points from Nashville to Chattanooga? Do you bring any freight from eastern seaboard points through the city of Nashville to Chattanooga?

Mr. KNOX: I stated a moment ago that we might occasionally have such a shipment, but we do not consider we have a line for that business.

Com'r MORRISON: You said that it was possible, or somebody said that some class of goods, or one class at least, could be or had been shipped to Pittsburg by rail, and thence by water to Nashville—it was queensware. What would be the method of shipment? The

boats that would take it at Pittsburg would not take it farther than Cincinnati, would they? There is no line of boats from Pittsburg further down the river than Cincinnati, is there?

Mr. KNOX: Well, my information as to the packet lines on the Ohio now is not sufficient to state positively, but my general information is that it is as you suggest.

Com'r MORRISON: Then if it went by water to Nashville it would go on one boat to Cincinnati, and next on another to Paducah, and thence by the Cumberland boat?

Mr. KNOX: Yes, sir, it is as you explain it to be.

Mr. CONNOR: That is all.

Mr. FITZGERALD: Do you not know the fact that there are towboats on the Mississippi river that run from Pittsburg, which carry merchandise down the river from Pittsburg to Cincinnati?

Mr. KNOX: I have understood that the Wheeling and Pittsburg manufacturers make up tows of glassware and such things for lower river points, but I do not know how frequently those boats run.

Mr. FITZGERALD: You know that they exist?

Mr. KNOX: Yes, sir.

Mr. CONNOR: Do you know it of your own knowledge?

Mr. KNOX: I have heard it.

400 Com'r MORRISON: How about the coal men; have they their own means of shipment?

Mr. KNOX: Yes, sir.

Com'r MORRISON: This business is taken up at Pittsburg and along the river front by these boats; that is not business that comes through from the East?

Mr. KNOX: These goods are generally from Pittsburg.

T. G. RYMAN, a witness on behalf of the respondent-, having been duly sworn, testified as follows:

Mr. BAXTER: Where do you live?

Mr. RYMAN: In Nashville.

Mr. BAXTER: How long have you been there?

Mr. RYMAN: I was born there, and have lived here ten years, and the rest of the time there.

Mr. BAXTER: In what business are you engaged?

Mr. RYMAN: In the steamboat business.

Mr. BAXTER: What connection have you with it?

Mr. RYMAN: I own and control and am general manager of the lower line below Nashville and also the upper line above Nashville.

Mr. BAXTER: Are there boats from Nashville to points down the river?

Mr. RYMAN: We run one boat twice a week to Paducah and one twice a week to Evansville, Ind. And then we have extra boats to use when business demands. We have four boats below, but we only run three regularly.

Mr. BAXTER: How long have you been running that line of boats?

Mr. RYMAN: I have been running one boat or more 17 or 18 years.

Mr. BAXTER: About what portion of the year is the lower Cumberland navigable?

Mr. RYMAN: Ordinarily it is navigable from eight to nine months, but in the past three years it has been navigable I suspect, eleven months in the year.

Mr. BAXTER: Can you state what your rates are from Cincinnati and Evansville to Nashville on merchandise?

Mr. RYMAN: Well, from Evansville it is 10 cents a 100 on heavy goods, on general merchandise. From Cincinnati and Louisville on heavy freights the rate is 15 cents—12 to 15. We have brought some freights as low as 12 cents from Cincinnati. That is brought from Cincinnati by another boat and delivered to us; they
401 reship with us at Paducah, Ky. That is the terminus of our boat that makes two trips a week.

Mr. BAXTER: What is the capacity of your boats?

Mr. RYMAN: We have boats that will carry 375 tons and some that will carry 250—from 250 to 375 tons.

Mr. BAXTER: They make three regular trips a week?

Mr. RYMAN: We do not all the time. In the dull season we do not run but two boats. Part of the time we run three and sometimes in heavy business we run four.

Mr. CLARK: Please state to the court the condition of the boat traffic when the Louisville & Nashville road lowered its rates some years ago, what lines were then running on these rivers and what lines have been discontinued in consequence of that?

Mr. RYMAN: Well, 17 years ago, when I commenced boating in the Cumberland river there was a line of boats from Pittsburg and from Evansville and one from Louisville and occasionally a boat from St. Louis.

Mr. CLARK: Any other regular line from any other points?

Mr. RYMAN: I started in with a local boat to Paducah. There was a line previous to mine. There have always been boats ever since I can remember from Paducah to Nashville and ever since the war there have been boats from Evansville into Nashville.

Mr. CLARK: Have those lines been discontinued?

Mr. RYMAN: Yes, sir, they have all been discontinued.

Mr. CLARK: Is that due to railroad competition in freight?

Mr. RYMAN: Yes, sir, I would think so. That is the cause of it. In other words the facilities of the railroads have been greater and there have been more of them.

Mr. CLARK: I will ask you to state if the rates are something like equal if the shipment does not go by railroad, and if it is not due to the gain in time or insurance or both?

Mr. RYMAN: There is a gain in time and a gain in insurance and in handling. They put it in the car and it goes through. We have to break bulk. The rail has the advantage. It takes several days longer by water.

Mr. CLARK: Now, if the rates were advanced by the railroads state whether you would be of the opinion it would cause the restor-

ing of these lines of boats in consequence of the increased traffic by river?

Mr. RYMAN: If it were increased to any extent there would be through lines from those points again. I would think that. I know it.

402 Mr. CLARK: What is the condition of the Cumberland river now in the way of shipping facilities as compared with former years?

Mr. RYMAN: Well, the Government has put in some dams and has caused a few more inches of water, and they have taken out some rocks and have cut out leaning timber out of the narrow shoots. I think it is better, some little better.

Mr. CLARK: You do not know whether that has enabled you to use the river more in the past two or three years?

Mr. RYMAN: The main cause of that is because we have had more rain in the past three summers than I have known in 20 years before in succession.

Cross-examination:

Mr. CONNOR: You are — thoroughly skilled river captain?

Mr. RYMAN: Yes, sir.

Mr. CONNOR: You say that the river has been navigable for the past three years for nearly eleven months in each year?

Mr. RYMAN: I think so, I might be mistaken about that, but I told you I judged about that. I have a lot of low-water boats we use in low water. We have a lot of boats that run in from 14 to 16 and 18 inches of water and we use them in the summer when it is dry. We used them when the big side-wheel boats that we use in high water are laid up. Our heaviest boats ran nearly all last summer except when laid up for repairs.

Mr. CONNOR: You would not run on an average more than nine months would you?

Mr. RYMAN: Not taking it for 20 years back.

Mr. CONNOR: Now the boats that you can run over there in low water, how much tonnage do you think they carry in low water?

Mr. RYMAN: Our lightest boats?

Mr. CONNOR: The one that runs when the water is low. How much do you think those boats will carry?

Mr. RYMAN: Well, we have one that carries 100 tons. We have low-water boats that will carry 250 tons.

Mr. CONNOR: That is from two to five car-loads of 40,000 pounds each?

Mr. RYMAN: That is in those three months in the summer.

Mr. CONNOR: From two to five car-loads would be about what they would carry—any of those boats during that time?

403 Mr. RYMAN: Most of the boats carry 250 tons.

Mr. CONNOR: How many car-loads?

Mr. RYMAN: Six car-loads.

Mr. CONNOR: No, that would be 12½ cars at 40,000 each, instead of 6, would it not?

Mr. RYMAN: Yes, sir.

Mr. CONNOR: How many car-loads could you haul then in a week during low water?

Mr. RYMAN: Sometimes we could not haul very much. Most of the time we do not carry much freight in low water.

Mr. CONNOR: Would you consider then that your boats in this season would have a controlling influence upon rates by railroad when you could not carry freight?

Mr. RYMAN: Not when it is dead low water, but it is this way. The merchants use our river rates as a check on the railroad and if the road during this low water was to raise their rates because they had the advantage, then their patrons would use our boats more extensively in high water. That is a fact.

Mr. CONNOR: Do you feel that you have a controlling influence as a boatmaster and owner of boats, an actual controlling influence for longer than nine months in a year on an average?

Mr. RYMAN: Yes, sir; I think that in the way I have said, we do.

Mr. CONNOR: Do you think that you could control the rate when you cannot carry the freight?

Mr. RYMAN: We could not carry it in the summer generally, but last summer we could.

Mr. CONNOR: You are the owner of quite a number of boats, are you not?

Mr. RYMAN: Yes, sir.

Mr. CONNOR: Have you any agreement or contract with any railroads as to the making of rates?

Mr. RYMAN: I have not a line of writing with them. I have an agreement with Frank B. Gray, of Clarksville, Tenn. He is my agent there. He is a railroad man and also has a wharf-boat. I have an agreemant with him that I will not cut the eastern rate on tobacco provided he does not raise it too high. I force him to recognize the fact that Clarksville must be considered a river point. I do that because I do not want the competition.

Mr. CONNOR: How much freight do you carry that originates in eastern seaboard points, Boston, New York, Philadelphia and Baltimore? How much of that kind of freight do you carry into the city of Nashville?

Mr. RYMAN: Well, we do not carry a great deal of it.

404 We get some goods consigned to us at Evansville from eastern points.

Mr. CONNOR: What class of goods are they?

Mr. RYMAN: They are box goods generally; sometimes starch and such things from somewhere around there.

Mr. CONNOR: That starch came from the West, did it not? You are not sure it came from eastern points such as New York, Philadelphia & Baltimore.

Mr. RYMAN: No, sir; not the starch, I think; but we once in a while get a shipment from the East, but not much.

Mr. CONNOR: That is all.

Mr. DANIELS: Is it not a fact that what you bring on the river is simply local traffic?

Mr. RYMAN: You mean on our river boats? We have a great deal of reshipment from Cincinnati, Pittsburg, and Wheeling, such freights as iron and glassware, etc.

Mr. DANIELS: You do not compete for any trade from the East?

Mr. RYMAN: We do not have agents to solicit it, but sometimes we get it. Maybe 20 shipments in a year, from eastern cities.

Mr. CONNOR: What do you call eastern cities?

Mr. RYMAN: It occurs just once in a while. The merchants get dissatisfied with the railroads and they ship by water in order to force the railroads down.

Mr. DANIELS: How do you know that?

Mr. RYMAN: Well, they come to my office and have confidential talks with me about that. They say they want to bring the road down, and I consent for this reason, that if I will not make a contract and try to make lower rates to Nashville, they threaten me by saying they will put on a new line of boats. And they would do it, too. I won't go into any contract, but anything that is offered we take. That is the position I have always taken.

Com'r VEAZEY: How much of a rise would there have to be in the rail rates to re-establish the former condition of transportation by river, which you testified about?

Mr. RYMAN: The 15-cent rate out of Cincinnati on heavy goods would have to be raised to from 20 to 25 cents—25 cents. You mean by river or rail?

Com'r VEAZEY: By rail, how much would the increase of the rate by rail have to be to cause the re-establishment of water transportation as it formerly existed?

405 Mr. RYMAN: Taking insurance and everything else into consideration. Is it to be insured by the river?

Com'r VEAZEY: You said that if the rail rate was put up it would drive business to the river.

Mr. RYMAN: There are several things to be considered. If there was back business it would make a difference. But I suppose they could get lumber. Then the steamers would have to get return trips. They used to get iron from the Alabama furnaces. I suppose the railroad would have to charge all the way from 22½ to 27 cents; from 25 to 27 cents, of course there is a difference in classification.

Com'r VEAZEY: Their charge now is about what?

Mr. RYMAN: I do not know.

Mr. CONNOR: 23 cents on first class, is it not?

Mr. RYMAN: It is 22 cents on nails, I think, and 27 to 30 on light goods. If a steamboat could get 25 cents generally and get trips out of Cincinnati to Nashville and then could secure anything at all back, they could make money.

Com'r VEAZEY: I simply wanted to know what amount of lifting up of rates by the railroads would turn the transportation to water, again?

Mr. RYMAN: If the steamboat could get 25 cents on general mer-

chandise, or 20 on heavy, and from 25 to 26 on light goods, the railroads, in order to force the shipper to ship by water, would have to charge more than that amount.

Com'r MORRISON: Then you would want a certain amount of security before you would put in a line of boats; that is, some guarantee that they would not put down the rates again?

Mr. RYMAN: They would do that, I suspect. That is another thing that a boat has to contend with. But my boat and the through boats on the Mississippi and Ohio rivers, on the Memphis line, would meet the competition. We would have something to do with it.

Com'r MORRISON: You have no line except on the Cumberland river, have you?

Mr. RYMAN: No, sir; and we could not live if the rates were any lower. We are working about as cheaply as we can make anything.

Mr. BAXTER: Do you know anything about a line of barges from Pittsburg down the Ohio river?

Mr. RYMAN: I have not been over there this season, but there is usually a tow made up, it frequently runs down to St. Louis and carries this Iron Mountain freight to Pittsburg and takes down general merchandise.

Mr. BAXTER: Do you know anything about the water lines
406 at Memphis from New Orleans, and from Evansville and Pittsburg?

Mr. RYMAN: From Pittsburg to New Orleans?

Mr. BAXTER: No, from Pittsburg to Memphis and from New Orleans to Memphis.

Mr. RYMAN: Well, this barge line that I speak of runs to Memphis from Pittsburg. Then there is a regular packet line from Pittsburg to Cincinnati, and also a regular packet line from Cincinnati to Memphis, and also to New Orleans from Cincinnati.

Mr. BAXTER: Those are lines regularly on the river?

Mr. RYMAN: Yes, sir; when there is water in the river.

Mr. BAXTER: Is the Mississippi river ever unnavigable below Memphis?

Mr. RYMAN: No, sir; I never knew it to be. I have known it to be a little low for big boats, but they always have boats running there.

Mr. BAXTER: Do you know whether they do any considerable amount of trade to and from Memphis?

Mr. RYMAN: I am not posted as to the trade at Memphis. They do some business the entire year below Memphis. I am not as well posted on the Mississippi river as I am on the Ohio and Cumberland.

Mr. BAXTER: Do you know whether or not there is a barge line between Louisville and Cairo on the Ohio river?

Mr. RYMAN: Yes, sir; I read that in their River News.

Mr. BAXTER: They carry very cheaply, at very low rates?

Mr. RYMAN: Yes, sir.

Mr. MOON: Are you telling what you know or what you read? We want to know what you know and nothing else.

Mr. RYMAN: I read that in the River News, which is reliable.

Mr. CLARK: I believe that you said that merchants came to you and told you that if you made any contract with the Louisville and Nashville road, by which you could not compete with them, that they would set up an opposition line?

Mr. RYMAN: I have had that told me more times than once.

Mr. CLARK: And as a matter of fact, that influences you in your feeling about it?

Mr. RYMAN: Yes, sir; my judgment and knowledge of the
407 facts in regard to the river business, and of the nature of men and their desire to make money, &c. I know that would be the consequence and that is the reason I have not made any contract. I have a piece of paper in my possession that I could have signed years ago.

Col. J. W. BARLOW, a witness on behalf of the respondent, having been duly sworn, testified as follows:

Mr. BAXTER: You occupy some position in the United States Government?

Mr. BARLOW: Yes, sir.

Mr. BAXTER: Please state what it is.

Mr. BARLOW: I have the rating of lieutenant colonel in the army—engineer corps.

Mr. BAXTER: Have you been at any time, or are you now, in charge of Government on the lower Cumberland river?

Mr. BARLOW: Yes, sir; I am now in charge of the work on the Cumberland river.

Mr. BAXTER: How long have you been in charge?

Mr. BARLOW: Since March, 1886.

Mr. BAXTER: The lower Cumberland includes all that part of the river from Nashville to its mouth?

Mr. BARLOW: Yes, sir.

Mr. BAXTER: Can you state, Colonel, from any knowledge you have from your official service, that is from statistics and otherwise, the amount of money that has been spent by the Government below Nashville on that river?

Mr. BARLOW: About $265,000 has been expended below Nashville.

Mr. BAXTER: Over what distance on the river is that?

Mr. BARLOW: A little less than 200 miles.

Mr. BAXTER: What has been the character of the improvements?

Mr. BARLOW: Excavation in the bed of the river through rocky reefs and the construction of wing dams at certain places for deepening the water.

Mr. BAXTER: Over what period of time has that money been expended?

Mr. BARLOW: The first improvements were made as far back as

1830, I think, and they have been continued with some interruption up to the present time; the appropriation yearly has been quite small.

Mr. BAXTER: Was there not an intermission between 1838 and 1871, when there were no appropriations made?

Mr. BARLOW: Yes, sir.

408 Mr. BAXTER: Can you state what the appropriations were prior to 1838 and those made since 1871 from official information?

Mr. BARLOW: I have a report here which may possibly give that information, though I have not the full records with me.

Mr. BAXTER: You can give approximations?

Mr. BARLOW: Yes, sir. The official report shows that from 1832 to 1838 Congress made five appropriations aggregating $155,000, for the entire river. Of that, $20,000 was devoted to the river below Nashville, the balance, $135,000, was expended upon the river generally; the records do not show how this was expended. But a portion of it was probably expended below Nashville, and a portion above.

Mr. BAXTER: And since 1871, the statistics are more exact, are they not, the appropriations made since 1871? What have been the appropriations spent below Nashville since then?

Mr. BARLOW: This report is very general and the details are not here, but $265,000, has been appropriated and expended upon the lower river.

Mr. BAXTER: How many appropriations does that cover, about 16 or 18?

Mr. BARLOW: Probably, I have not a complete list, but it is probably something like that. The appropriations have been made, I think, in all the general appropriation bills since 1871 that have been made. They have been pretty regular since that time, 1871, to the present time. During that time I should judge at least 15 or 16 appropriations have been made. In the past 6 or 8 years the appropriations have occurred biannually.

Mr. BAXTER: What character of improvements have been made on the lower Cumberland and have they had the effect of materially increasing the utility of that river for commerce?

Mr. BARLOW: The improvement has not been very great in depth under the system that has been used, and for that reason a new system has been adopted and will be carried out as appropriations will be made. It might be said that the effect of these improvements, these wing dams and excavations, is, perhaps, not as great, apparently as great, owing to the fact that the stream seems to have gradually diminished in the volume of water until within the past three years when a change has occurred and the volume has increased during low water.

Mr. BAXTER: Has the effect been to make it more beneficial as a channel of commerce or less so?

409 Mr. BARLOW: More beneficial.

Mr. BAXTER: You say that now another system has been introduced?

Mr. BARLOW: Yes, sir, slack-water navigation.

Mr. BAXTER: Have any appropriations been made for that purpose?

Mr. BARLOW: Not below Nashville. A survey has been made for this system and plans have been prepared for its adoption below Nashville. Surveys and plans have been made for the adoption of a slack-water navigation below Nashville, but no appropriations for that have been made. The system has been commenced above Nashville.

Mr. BAXTER: Have you recommended appropriations for that purpose?

Mr. BARLOW: I have recommended the adoption of that system.

Mr. BAXTER: I understand then, that you think that the slack-water system will be still more beneficial for the purposes of navigation than the other systems?

Mr. BARLOW: Yes, sir.

Cross-examination:

Mr. CONNOR: Suppose that your recommendation was adopted by the chief engineer and then the appropriation was made, how many years do you suppose it would take to make slack-water navigation of any value?

Mr. BARLOW: That would depend entire- upon the rapidity of the appropriations.

Mr. CONNOR: Suppose you got them in the usual method of Congress and the usual method of engineer's operations?

Mr. BARLOW: I can hardly say what that method would be as applied to a special case. We might get a million dollars a year, or we might get half of that. The estimated cost of such improvement below Nashville is about two million dollars.

Mr. CONNOR: If you got all the money in two years, how many years would it take to finish the work?

Mr. BARLOW: It would be three or four years, not less than four years.

Mr. CONNOR: You have statistics in your office showing the water levels of the river, I suppose, for a number of years?

Mr. BARLOW: Yes, sir.

Mr. CONNOR: What do those figures show as to the average condition of the river for navigation as to the number of months of the year it is navigable?

410 Mr. BARLOW: They show that the river has been interrupted usually some three or four months, in some years not so much.

Mr. CONNOR: The average?

Mr. BARLOW: From eight to ten months of navigation and from two to four months of interruptions. The present year, I believe, has been practically without any interruptions.

Com'r MORRISON: Did I understand you to say that $265,000 had been applicable to the river below Nashville?

Mr. BARLOW: That much has been expended below Nashville.

It included all the money that has been expended on the river according to my reports.

Com'r MORRISON: All of that $265,000 has not been expended below Nashville since 1871?

Mr. BARLOW: Not all of it.

Com'r MORRISON: Your reports do not show definitely what portion of it was thus expended?

Mr. BARLOW: This report that I have with me does not, but I have reports that do.

Com'r MORRISON: Will you please then add to your statement, at your convenience, the exact amount if you have it, that has been expended on the Cumberland river below Nashville?

Mr. BARLOW: Yes, sir.

Mr. BAXTER: We have no other evidence to introduce.

Com'r MORRISON: Is there anything further, Judge Moon?

Mr. MOON: We have one other witness that we would rebutt with, Mr. Drackett, but he seems not to be here. We have no further testimony.

Mr. BAXTER: Either party can file written arguments, I suppose? I understood as much from a telegram I had from the secretary.

Com'r BRAGG: That is our practice.

Com'r MORRISON: We usually allow counsel to make their own arrangements about that.

Mr. CONNOR: We will attend to it then.

Com'r MORRISON: Will it be oral or by brief?

Mr. MOON: I would ask your honors to fix the time for filing the briefs.

Com'r BRAGG: We usually leave that to counsel. At any time they agree.

(After consultation, it was agreed that 30 days should be allowed for the filing of briefs by the plaintiff and 20 days for the respondents to reply and then 10 days after that for the plaintiff to
411 answer the respondents' brief. That is, 60 days in all after the parties have received a copy of the testimony.)

Com'r MORRISON: Then this will dispose of this case for the present, I suppose.

Thereupon, at 12.30 p. m., this case was closed.

EXHIBIT No. 1.

Tables of Distances from New York.

To Nashville, via Pennsylvania and Louisville & Nashville railways:

New York to Philadelphia	91	
Philadelphia to Harrisburg	105	
Harrisburg to Pittsburg	249	
Pittsburg to Cincinnati	312	
Cincinnati to Nashville	295	1,012 miles.

To Chattanooga, via Penn., Cumberland Valley, Shen. Val., N. & W. & E. T.:

New York to Harrisburg	196
Harrisburg to Hagerstown	74
Hagerstown to Roanoke	239
Roanoke to Bristol	150
Bristol to Chattanooga	241—900 miles.

To Chattanooga, via Pennsylvania and Cincinnati Southern railways:

New York to Cincinnati	717
Cincinnati to Chattanooga	335—1,052 miles.

To Chattanooga and Nashville, via Cincinnati, Ohio:

New York to Cincinnati, via Penn. R'y	717
Cincinnati to Chattanooga, via Cin. So.	335
Cincinnati to Nashville, via L. & N.	295
	40 miles.

Showing Chattanooga farther from Cincinnati.

The above tables show that Chattanooga is nearer to New York by 112 miles than is Nashville.

Taking Cincinnati as a basing point Chattanooga's haul would be only 40 miles longer than the haul to Nashville.

EXHIBIT No. 2.

C.—Comparison of Freight Rates.

From Chattanooga, Nashville, Memphis, and Cincinnati to stations on Memphis & Charleston R'y.

Stations.	Miles.	From Chattanooga.				From Nashville.					From Memphis.					From Cincinnati.				
		114 1	**98** 2	**73** 4	**49** 6	Miles	**91** 1	**78** 2	**42** 4	**31** 6	Miles	**100** 1	**85** 2	**45** 4	**35** 6	Miles	**65** 1	**57** 2	**30** 4	**22** 6
Scottsboro.....	56	**155** 41	**134** 36	**99** 26	**67** 18	131	**183** 92	**155** 77	**92** 50	**70** 39	254	**155** 55	**130** 45	**80** 35	**60** 25		**157** 92	**134** 77	**82** 52	**61** 39
Woodville.....	73	**157** 43	**136** 38	**101** 28	**68** 19	155	**181** 90	**153** 75	**91** 49	**69** 38	238	**155** 55	**130** 45	**80** 35	**60** 25		**155** 90	**132** 75	**80** 50	**60** 38
Brownsboro	87	**158** 44	**137** 39	**102** 29	**68** 19	141	**177** 86	**149** 71	**90** 48	**68** 37	224	**155** 55	**130** 45	**80** 35	**60** 25		**151** 86	**128** 71	**78** 48	**59** 37
Huntsville.....	97	**159** 45	**138** 40	**103** 30	**69** 20	130	**131** 40	**105** 35	**67** 25	**48** 17	213	**155** 55	**130** 45	**80** 35	**60** 25		**140** 75	**119** 62	**76** 46	**52** 30
Madison.....	107	**160** 46	**138** 40	**103** 30	**69** 20	136	**165** 74	**138** 60	**83** 41	**63** 32	203	**155** 55	**130** 45	**80** 35	**60** 25		**139** 74	**117** 60	**71** 41	**54** 32
Decatur	122	**162** 48	**139** 41	**104** 31	**70** 21	121	**131** 40	**105** 35	**67** 25	**48** 17	188	**154** 54	**129** 44	**79** 34	**59** 24		**140** 85	**129** 72	**84** 54	**58** 36

This table makes same kind of illustrations as Tables A and B.

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EXHIBIT No. 3.

Comparisons of Freight Rates

From Chattanooga and Nashville to stations on Nash., Cht. & St. L. R'y.

Stations.	From Nashville.					From Chattanooga.				
	Miles	91	78	42	31	Miles	114	98	73	49
		1	2	4	6		1	2	4	6
		147	**123**	**78**	**61**		**142**	**120**	**89**	**63**
Bridgeport	129	50	45	36	30	28	28	22	16	14
		142	**125**	**79**	**62**		**142**	**121**	**91**	**65**
So. Pittsburg	.....	51	47	37	31	34	28	23	18	16
		143	**125**	**79**	**63**		**145**	**124**	**94**	**67**
Jasper	135	52	47	37	32	322	31	26	21	18
		143	**125**	**79**	**63**		**145**	**124**	**94**	**67**
Victoria	143	52	47	37	32	48	31	26	21	18
		143	**125**	**79**	**63**		**145**	**124**	**94**	**67**
Dunlap	161	52	47	37	32	66	31	26	21	18
		141	**123**	**77**	**61**		**144**	**123**	**93**	**67**
Stevenson	113	50	45	35	30	38	30	25	20	18
		136	**118**	**77**	**61**		**148**	**127**	**97**	**70**
Sherwood	97	45	40	35	30	54	34	29	24	21
		134	**116**	**74**	**58**		**150**	**129**	**99**	**72**
Cowen	87	43	38	32	27	64	36	31	26	23
		146	**128**	**82**	**66**		**166**	**145**	**110**	**81**
Sewance	95	55	50	40	35	72	52	47	37	32
		156	**135**	**87**	**71**		**176**	**152**	**115**	**86**
Mont Eagle	101	65	57	45	40	84	62	54	42	37
		133	**115**	**73**	**57**		**153**	**132**	**101**	**73**
Decherd	72	42	37	31	26	69	39	34	28	24
		133	**115**	**73**	**57**		**153**	**132**	**101**	**73**
Winchester	75	42	37	31	26	72	39	34	28	24
		139	**121**	**77**	**61**		**162**	**141**	**108**	**79**
Elora	94	48	43	35	30	91	48	43	35	30
		141	**123**	**77**	**61**		**164**	**143**	**108**	**79**
Fayetteville	112	50	45	35	30	100	50	45	35	30
		131	**113**	**67**	**48**		**159**	**138**	**103**	**69**
Huntsville	20	40	35	25	17	97	45	40	30	20
		129	....	**70**	**55**		**157**	**136**	**105**	**76**
Tullahoma	69	38	33	28	24	82	43	38	32	27
		136	....	**73**	**57**		**159**	**138**	**104**	**75**
Manchester	81	45	40	31	26	94	45	40	31	26
		141	.....	**82**	**61**		**164**	**143**	**108**	**79**
McMinnville	103	50	45	40	30	116	50	45	35	30
		151	.....	**87**	**69**		**174**	**153**	**118**	**87**
Sparta	130	60	55	45	38	143	60	55	45	38

The figures in light give local rates. The figures in black give local rates plus the rates from New York. For illustration:

New York to Nashville, 1 class $0.91
New York to Tullahoma, " $0.38

$1.29

EXHIBIT No. 4.

Before the Interstate Commerce Commission.

THE BOARD OF TRADE OF CHATTANOOGA
vs.
THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILWAY COMPANY *et al.*

The Pennsylvania Railroad Company, one of the respond-
414 ents in the above-stated case, for answer to the complaint filed therein, says:

1. That in respect to the matters contained in the said complaint, it has not violated any of the provisions of the act to regulate commerce.

2. That it carries freight over its line as part of three separate through routes from the North to Chattanooga, Nashville and Memphis, namely:

By way of the Delaware peninsula, via Norfolk, the Norfolk & Western railroad and the East Tennessee, Virginia & Georgia railway.

Via the Pennsylvania railroad, Cumberland Valley railroad, Shenandoah Valley railroad, Norfolk & Western railroad and the East Tenn., Virginia & Georgia railway.

Via its main line to Pittsburg and thence via Pittsburg, Cincinnati & St. Louis railway via Cincinnati.

That it receives its proportion of the through rate for transportation by either of these routes; that such through rates are not fixed by itself, the rates by the first two routes being fixed by an association or corporations known as the Southern Railway & Steamship Association, of which the Pennsylvania Railroad Company is not a member; that it has no voice in the establishment of the rates by such routes, but accepts such rates as the companies, members of such association, direct it to charge; that the East Tennessee, Virginia & Georgia Railway Company and the Norfolk & Western Railway Company are members of such association.

That the rates for the third route referred to above are fixed by the Trunk Line Association, of which this respondent and many other companies are members, and that such rates were deemed by said association to be just and reasonable.

3. That for further specification of the justification of the rates by the associations aforesaid, reference is made to the answers of the other defendants.

Wherefore this respondent prays that said complaint be dismissed.

THE PENNSYLVANIA RAILROAD COMPANY,
By WILLIAM H. JOYCE,
General Freight Ag't.

JAMES A. LOGAN,
Of Counsel for Def't.

STATE OF PENNSYLVANIA, }
City of Philadelphia. }

Before me, the undersigned, personally appeared William H. Joyce, who being sworn, doth depose and say that he is the
415 general freight agent of The Pennsylvania Railroad Company, one of the defendants in this proceeding, and that the foregoing answer of that company is true as he verily believes.

WILLIAM H. JOYCE.

Sworn and subscribed before me this sixteenth day of May, A. D. 1890. Witness my hand and notarial seal.

[SEAL.] AL. P. BURCHELL,
Notary Public.

Tables of Distances from New York.

To Nashville, via Pennsylvania and Louisville & Nashville railways:

New York to Philadelphia	91
Philadelphia to Harrisburg	105
Harrisburg to Pittsburg	249
Pittsburg to Cincinnati	312
Cincinnati to Nashville	295
	1,012 miles.

To Chattanooga, via Penn., Cum. Val., Shen. Val., N. & W. and E. T., V. & Ga. R'ys:

New York to Harrisburg	196
Harrisburg to Hagerstown	74
Hagerstown to Roanoke	239
Roanoke to Bristol	150
Bristol to Chattanooga	241
	900 miles.

To Chattanooga, via Pennsylvania and Cincinnati Southern railways:

New York to Cincinnati	717
Cincinnati to Chattanooga	335
	1,052 miles.

To Chattanooga from Cincinnati	335
To Nashville from Cincinnati	295

Showing the Chattanooga haul only from Cincinnati 40 miles farther.

These tables show to the honorable commission:

Chattanooga is nearer to New York than Nashville by 112 miles.

Even taking Cincinnati as a basing point, it is shown that:
416 Chattanooga is only 40 miles farther from Cincinnati than is Nashville.

EXHIBIT No. 5.

Prorating.

Rates of freight from New York and Cincinnati as follows:

New York to Cincinnati, via Penn. R'y, 717 miles, 1 ton costs	13 20
Cincinnati to Nashville, via L. & N. R'y, 295 miles, 1 ton costs	5 20
Total	$18 40

New York to Nashville, 1,012 miles, 1 ton costs.....$18 20

This rate is prorated thus:

1 ton, 2,000 lbs. at 91c. per 100 lbs. (Nashville)..... 18 20

Prorated:

2,000 lbs. at 65c. (to Cincinnati).....	$13 00	
2,000 lbs. at 26c. (Cin'ti to Nashville).....	5 20	
		18 20

These figures show that the rates from New York to Nashville are prorated over the entire mileage of 1,012 miles from N. Y. to Nashville.

The Chattanooga Rate.

This rate is also a prorate of the entire mileage, but at a higher rate per ton per mile.

1 ton from N. Y. to Chattanooga at 114c.....$22 80

If it was prorated upon the same rate per ton per mile, it would be—

New York to Chattanooga, to Cincinnati.....	13 20	
Cin'ti to Chat.....	5 95	
		19 15

The difference—$3.65—is taken by the road south of the Ohio river, or it is prorated over the entire line. If prorated then
417 the Pennsylvania railway discriminates against Chattanooga by charging a higher rate per ton per mile than it does on freights for Nashville.

It is the rule of rate-making for the shorter lines to name rate.

If that rule is applied to the Chattanooga rates we will receive on 1 cl.:

New York to Chattanooga, via Penn., C. V., S. V., N. & W., E. T., V. & G. R'ys. 900 miles.

2,000 lbs. for 900 miles, .018 per ton per mile, $16.20.

This rate, which is our right under the "shortest line" rule, would give us the advantage of Nashville by $2.00 per ton on 1-class freights.

Estimated Population.

Towns on Alabama Great Southern railway, Chattanooga to Attalla.

Stations.	Population.
Wildwood	25
Morganville	25
Trenton	500
Rising Fawn	800
Sulphur Springs	50
Valley Head	50
Fort Payne	3,000
Collbran	25
Porterville	500
Collinsville	300
Attalla	1,200
Gadsden	4,500
Total, 87 miles	10,970

Towns on Cincinnati Southern railway, Chattanooga to Oakdale.

	Mellville	20
	Daisy	50
	Rathburn	200
	Sale Creek	50
	Coulterville	50
	Graysville	25
	Darwin	200
	Dayton	2,700
	Decatur	500
	Evansville	20
	Spring City	500
	Roddy	20
418	Rockwood	1,800
	Cardiff	50
	Harriman	100
	Crossville	500
	Kingston	1,000
	Wartburg	200
	Emory Gap	20
	Oakdale	100
	Total, 84 miles	8,105

Comparison of Tariffs.

Showing rates now in force on Ala. G. S. R. R., what would be if made on the Cin. So. basis and if made on N. & C. basis.

Chattanooga to—	Miles.	1	2	3	4	5	6	C	D	F
MORGANVILLE	10	15	13	11	9	7	6	5	4	10
On C. S. Basis	10	10	9	8	7	7	6	7	6	14
On N. & C. Basis	*10*	*12*	*10*	*9*	*8*	*7*	*6*	*6*	*5*	*10*
TRENTON	18	23	20	17	14	12	9[2]	8	7[2]	15
On C. S. Basis	18	15	13	12	10	8	7	10	8	16
On N. & C. Basis	*18*	*20*	*16*	*14*	*12*	*12*	*11*	*8*	*7*	*14*
VALLEY HEAD	40	35	30	25	20	18	14[2]	12	10[2]	21
On C. S. Basis	40	24	22	19	15	11	10	10	10	20
On N. & C. Basis	*40*	*30*	*25*	*22*	*20*	*19*	*18*	*13*	*12*	*24*
FORT PAYNE	51	47	40	33	26	24	19[2]	16	13[2]	27
On C. S. Basis	51	25	21	21	15	13	10	10	10	20
On N. & C. Basis	*51*	*32*	*27*	*24*	*22*	*21*	*20*	*14*	*13*	*26*
COLLINSVILLE	66	53	45	37	29	27	22	18	15	30
On C. S. Basis	66	26	25	21	15	13	10	10	10	20
On N. & C. Basis	*66*	*38*	*33*	*30*	*28*	*26*	*24*	*15[2]*	*14*	*28*
ATTALLA	87	57	49	40	31	29	23	19	15[2]	31
On C. S. Basis	87	28	27	23	17	15	12	10	10	20
On N. & C. Basis	*87*	*43*	*38*	*35*	*32*	*29*	*27*	*15[2]*	*14*	*27*
SPRINGVILLE	115	63	55	44[2]	34	32	24[2]	20[2]	17	34
On C. S. Basis	115	40	34	30	24	21	20	20	15	34
On N. & C. Basis	*115*	*50*	*45*	*40*	*35*	*33*	*30*	*15[2]*	*14*	*28*
BIRMINGHAM	143	67	59	44[2]	36	34	25[2]	21[2]	18	36
On C. S. Basis	143	49	40	36	28	24	23	23	15	36
On N. & C. Basis	*143*	*50*	*45*	*40*	*35*	*30*	*30*	*15*	*14*	*28*
WOODSTOCK	172	71	63	50[2]	38	36	27[2]	22[2]	19	38
On C. S. Basis	172	55	44	40	31	26	25	23	15	36
On N. & C. Basis	*172*	*57*	*52*	*47*	*42*	*39*	*35*	*19*	*17*	*34*
TUSCALOOSA	198	73	65	53	39	37	28	23	19[2]	39
On C. S. Basis	198	57	47	43	33	28	27	23	15[2]	38
On N. & C. Basis	*198*	*65*	*60*	*55*	*50*	*47*	*22*	*22*	*20*	*40*
AKRON	224	75	67	54[2]	40	38	28[2]	23[2]	20	40
On C. S. Basis	224	58	51	47	35	30	29	23	17	38
On N. & C. Basis	*224*	*65*	*60*	*55*	*50*	*47*	*42*	*22*	*20*	*40*
YORK	268	79	71	57[2]	42	38	29[2]	24[2]	21	42
On C. S. Basis	268	63	59	51	39	33	32	23	19	38
On N. & C. Basis	*268*	*65*	*60*	*55*	*50*	*47*	*42*	*22*	*20*	*40*
MERIDIAN	295	80	74	58	45	38	30	26	22	45
On C. S. Basis	295	68	61	55	42	35	33	23	19	38
On N. & C. Basis	*295*	*65*	*60*	*55*	*56*	*47*	*42*	*22*	*20*	*40*

419 *Comparison of Rates.*

From Chattanooga and Nashville to stations on the E. T., V. & Ga. R. R.

Stations.	From Chattanooga.					From Nashville.				
	Miles.	**114**	**98**	**73**	**49**	Miles.	**91**	**78**	**60**	**31**
		1	2	3	6		1	2	4	6
		132	**114**	**85**	**57**		**148**	**127**	**95**	**51**
Tyner	10	18	16	12	8	161	57	49	35	20
		136	**118**	**91**	**59**		**150**	**129**	**97**	**56**
Ooltewah	16	22	20	18	10	167	59	51	37	26
		140	**122**	**91**	**61**		**158**	**137**	**103**	**60**
Cleveland	29	26	24	18	12	170	67	59	43	29
		148	**128**	**95**	**64**		**166**	**143**	**107**	**63**
Charleston	41	34	30	22	15	192	75	65	47	32
		148	**128**	**95**	**64**		**166**	**143**	**107**	**63**
Riveville	49	34	30	22	15	200	75	65	47	32
		152	**130**	**96**	**65**		**168**	**144**	**108**	**64**
Athens	56	38	32	24	16	207	77	66	48	33

The figures in light show the local rates, and those in black show the local plus the rates to the cities of Nashville and Chattanooga from New York.

These rates exhibit the startling fact that Nashville merchants can have their goods brought over the E. T., V. & Ga. R'y and over the N., C. & St. L. R'y—through Chattanooga—and can ship them back to Chattanooga and to the stations on E. T., V. & G. enumerated above at less rates (totals) than can Chattanooga merchants. And this extra haul of 151 plus 151 plus 56 miles to Athens, on Nashville 6-class goods, lays them one cent a hundred cheaper in Athens than from Chattanooga—which is a 302 miles shorter haul.

A comparison of the mileage and the rates—and the routes—will afford a fair illustration of the injustice done Chattanooga's commerce.

Some Articles in the 6 Class.

Bags, coffee, glass, bottles, tumblers, arch iron, paints, pickles, rope, soda, prep. wheat, woolen goods, &c.

Table of Distances.

New York to Nashville, via Cincinnati, 1,093 miles.
New York to Chattanooga, via Cincinnati, 1,053 miles.
New York to Chattanooga, via Shen. Valley, 901 miles.
New York to Nashville, via Shen. Valley, 1,052 miles.
New York to Cincinnati, via Penn. R'y, 717 miles.
Cincinnati to Nashville, via L. & N. R'y, 296 miles.
Cincinnati to Chattanooga, via C. S. R'y, 335 miles.
Chattanooga to Nashville, via N., C. & St. L. R'y, 152 miles.
Chattanooga to Memphis, via M. & C. R'y, 310 miles.

420 *River Distances.*

Pittsburg to Chattanooga, via Ohio & Tenn. rivers, 1,375 miles.
Cincinnati to Chattanooga, via Ohio & Tenn. rivers, 908 miles.

Cairo to Chattanooga, via Tennessee river, 505 miles.
Paducah to Chattanooga, via Tennessee river, 456 miles.
Paducah to Nashville, via Cumberland river, 167 miles.
Cincinnati to Nashville, via Ohio & Cumb. rivers, 617 miles.

Freight Rates.

From—	To—	Classes. 1	2	3	4	5	6
New York to	Nashville	91	78	60	42	36	31
"	Memphis	100	85	65	45	38	35
"	Chattanooga	114	98	86	73	60	49
New York to	Cincinnati	65	57	44	30	36	22

Chattanooga pays more on freights from New York than does Nashville, as follows:

Chattanooga higher than Nashville by	23	20	26	31	24	18

The L. & N. R'y charges less from Cincinnati to Nashville (296 miles) than the C. S. R'y charges to Chattanooga (335 miles) as follows:

Only 40 miles' difference but higher as given in line above. This enormous excess the C. S. receives for 40 miles of longer haul.

Classification

Of articles that are dealt in chiefly by Chattanooga merchants.

	Articles.	Classes. 1	2	3	4	5	6	C	D	F
	Ammonia	1		3						
	Antimony			3						
	Bagging (Class A)									
	Bags						6			
421	Baskets	D 1								
	Blankets	1								
	Boots & shoes	1	2							
	Buckets				4	5				
	Candles				4					
	Canned goods				4	5				
	Carpets	1								
	Catsup	1			4					
	Cheese				4					
	China (common)	1								
	China (fine)	D 1								
	Cigars	1								
	Clocks	1								
	Coffee	1			4	5	6			

Confectionery, value lim'd				4	5	
Confectionery (value limited to 20c.)				4		
Crackers					5	
Drugs & medicines	1					
Dry goods	1					6
Earthenware	1	2	3	4	5	
Extracts & essences	1					
Fish			3			
Fixtures (gas)		2				
Food preparations				4	5	
Fruit	1		3	4	5	
Glass (bot, tumb's, chim.)			3		5	6
Glass (window)	1	2	3	4	5	6
Groceries (general)		2				
Hardware	1	2				
Hollow-ware	1		3	4	5	
Iron (agricultural)						
Iron (architectural						6
Iron (bolts, &c.)		2				
Jellies	1	2	3	4	5	
Lemons & oranges	1			4		
Liquors (whiskies, &c.)	1	2	3			
Oilcloth	1	2				
Oysters (canned, &c.)	1			4	5	
Paints	1		3	4	5	6
Paper (wall, &c.)		2		4		6
Pickles	1	2		4		6
Preserves	1	2	3	4	5	
Rope				4	5	6
Slates			3	4		
Soaps		2		4		
Snuff	D1	2				
Soda					5	6
422 Stationery		2				
Stoves & furniture	1		3		5	
Tinware	1		3	4		
Tobacco	1	2	3			
Turpentine	D1	2	3			
Varnish	1	2				
Vegetables (canned)			3	4	5	
Wire				4		6
Wheat (prepared)				4	5	6
Woolen goods		2				
Zinc (sheets)				4		
Zinc (oxide)					5	

Exhibit No. 6.

Charter, constitution, and by-laws. Organized Feb. 24, 1882. Chattanooga, Tenn., 1882. Printed at the Chattanooga Times steam printing house.

Charter.

State of Tennessee, }
Hamilton County. }

Charter of incorporation.

Be it known that M. J. O'Brien, president; W. O. Peeples, first vice-president; C. P. Robertson, second vice-president; I. B. Merriam, secretary; D. J. Pierce, treasurer; T. H. Payne, Filmore Gibson, D. B. Loveman and J. N. Trigg, executive committee, being officers elected January 23, 1882, all citizens of said county and more than twenty-one years of age, are hereby constituted a body politic and corporate, by the style and name of "The Board of Trade of Chattanooga," for the general object and purpose of having and maintaining a board of trade of Chattanooga; for the purpose of collecting, preserving and circulating valuable information relating to the business and progress of the city of Chattanooga, and its commercial connections, and especially the facts relating to the commercial and manufacturing interests; to encourage wise and needful legislation, and to oppose the enactment of laws likely to be prejudicial to commercial and manufacturing interests; to study the workings of our system of transportation upon which our commercial prosperity so largely depends, and endeavor to remedy by all proper means, the defects and abuses existing therein; to secure fair and equitable rates of freight to and from the city, the
423 discontinuance of vexatious and unjust overcharges and prompt settlement of damages on goods shipped; to facilitate the adjustment of differences, controversies and misunderstandings between its members and others; and to strive in all ways to promote the commercial, manufacturing and other industrial interests of the city.

The general powers of said corporation shall be to sue and be sued by the corporate name; to have and use a common seal, which it may alter at pleasure (if no common seal, then the signature of the name of the corporation by any duly authorized officer shall be binding); to purchase and hold, or receive by gift, bequest or devise, in addition to the personal property owned by the organization, real estate necessary for the transaction of the corporate business, and also to purchase or accept any real estate in payment or part payment of any debt due the corporation, and sell the same; to re-establish by-laws and make all rules and regulations, not inconsistent with the laws and constitution, deemed expedient for the management of corporate affairs, and to appoint such subordinate officers and agents, in addition to president, secretary and treasurer, as the business of the corporation may require, designate the name of the

office, and fix the compensation of the officer. The said above-named officers shall constitute the first board of directors. In all elections each member will be entitled to one vote, either in person or by proxy, and the result to be determined by the majority of the votes cast. Due notice of any election must be given by advertisement in a newspaper, or by personal notice to the members, or a day stated in the minutes of the board six months preceding the election. The board shall keep a record of their proceedings, which shall at all times be subject to the inspection of any member.

The corporation may establish branches in any other county in the State.

The board of directors may have the power to increase the number of the directors to ten, if they deem the interest of the corporation requires such increase; and the first or any other board of directors may have the power to elect other members, who, on acceptance of membership, shall become corporators equal with the original corporators.

The board of directors shall have the right to determine what amount of money paid into the treasury shall be a prerequisite for membership; of, if necessary, what amount shall be thus annually paid; and if a failure to pay shall in the discretion of the directors justify, the expulsion of said defaulting member.

424 If said corporation is organized as a literary or educational institution, under the patronage of any Christian or Jewish denomination, the corporation shall have the power to increase the number of directors or trustees, to regulate the mode and manner of appointments of the same on expiration of service, to regulate number, duties and manner of electing officers, either actual or *ex officio;* to appoint executive agencies, and to pass all other by-laws for the government of said institution as may be required by the denomination establishing the same; provided, said by-laws are not inconsistent with the constitution and laws of this State.

The term of all offices may be fixed by the by-laws, the said term, however, not to exceed three years. All officers hold over till their successors are duly elected and qualified.

The general welfare of the society, not individual profit, is the object for which this charter is granted, and hence the members are not stockholders in the legal sense of the word, and no dividends or profits shall be divided among the members.

The members may at any time voluntarily dissolve the corporation by a conveyance of the assets and property to any other corporation holding a charter from the State for purposes not of individual profit, first providing for the corporate debts.

A violation of any of the provisions of the charter shall subject the corporation to a dissolution at the instance of the State.

This charter is subject to modification or amendment, and in case such modification or amendment is not accepted, corporate business is to cease, and the assets and property, after payment of debts, are to be conveyed as aforesaid to some other corporation holding a charter for purposes not connected with individual profit. Acquiescence in any modification thus disclosed shall be determined in a

meeting of the members especially called for that purpose, and only those voting in favor of the modification shall thereafter compose the corporation.

The means, assets, income or other property of the corporation, shall not be employed directly or indirectly, for any purpose whatever, than to accomplish the legitimate objects of its creation, and by no implication or construction shall it possess the power to issue notes or currency, deal in currency, notes or coin, buy and sell products, or engage in any kind of trading, operations, or hold any more real estate than is necessary for its legitimate purposes.

425 Expulsion shall be the only remedy for non-payment of dues by the members, and there shall be no individual liabilities for corporate debts, but the entire corporate property shall be liable for the claims of creditors.

We, the undersigned, apply to the State of Tennessee, by virtue of the laws of the land, for a charter of incorporation for the purposes and with the powers and etc., etc., declared in the foregoing instrument.

Witness our hands the 21st day of February, 1882.

M. J. O'BRIEN.
C. P. ROBERTSON.
D. J. PIERCE.
T. H. PAYNE.
W. O. PEEPLES.
I. B. MERRIAM.
D. B. LOVEMAN.
FILLMORE GIBSON.
J. N. TRIGG.

STATE OF TENNESSEE, }
Hamilton County. }

Personally appeared before me, L. M. Clark, clerk of the county court of said county, M. J. O'Brien, W. O. Peeples, C. P. Robertson, I. B. Merriam, D. J. Pierce, D. B. Loveman, T. H. Payne, Fillmore Gibson, and J. N. Trigg, the within-named bargainors, with whom I am personally acquainted, and who acknowledged that they executed the within instrument for the purposes therein contained.

Witness my hand at office this 22d day of February, 1882.

L. M. CLARK, *Clerk.*

STATE OF TENNESSEE, }
Hamilton County. }

The above application for charter and certificate were filed the 22d day of February, at 10 a. m., entered in Note Book No. 2, page 296, and recorded in Book L, volume II, pages 153, 154 and 155.

Witness my hand at my office in Chattanooga.

H. C. BECK, *Register.*

I, David A. Nunn, secretary of state of the State of Tennessee, do certify that the foregoing instrument, with the certificates of acknowledgment of probate and registration, was filed in my office

for registration on the 24th day of February, 1882, in Corporation Record Book E, in said office, page 159.

In testimony whereof, I have hereunto subscribed my
426 official signature, and by order of the governor, affixed the great seal of the State of Tennessee, at the department in the city of Nashville, this 24th day of February, A. D. 1882.

[SEAL.] D. A. NUNN,
Secretary of State.

STATE OF TENNESSEE, }
Hamilton County. }

The foregoing charter, with certificates of probate and registration in this county, and registration in the office of the secretary of state, attached with the great seal embossed thereon, was returned to me the 25th day of February, 1882, at 2 p. m., and said secretary's certificate and great seal recorded in my office in Book L, volume II, page 155, at the foot of the registration of said charter and certificate.

Witness my hand at office in Chattanooga.

H. C. BECK, *Register.*

Constitution.

Article I.

The name of the association shall be "The Board of Trade of Chattanooga."

Article II.

The officers of the association shall consist of a president, two vice-presidents, secretary and treasurer. Said officers shall be *ex officio* members of the executive committee, and shall be chosen annually by ballot. The president shall not be eligible to two consecutive terms.

Article III.

The executive committee shall consist of the officers, the transportation committee, and five members of the association; said five members shall be chosen annually by ballot.

Article IV.

The officers, the executive committee and committee on transportation shall continue in office for one year, or until their successors are chosen. They shall conduct the affairs of the association. The executive committee shall fill any vacancy occurring in their own board, or in any office or committee of the association.

427 Article V.

All merchants and manufacturers, by paying an admission fee of ten dollars, may become members of this association, by written application and receiving a two-third majority of the votes of the members present at the meeting when the ballot is taken.

Article VI.

Any member violating the by-laws or refusing to pay his dues, which shall not exceed one dollar per quarter, may be dropped from the roll of membership or expelled by a majority of the votes cast at the meeting when his case is brought before the association. But no member shall be deprived of his rights in this association without being first notified of the complaint brought against him and of the meeting when the complaint shall be acted upon.

Article VII.

The regular meetings of the association shall occur on the evening of the first Monday in each month. The executive committee may meet as often as they think proper, but their stated monthly meeting shall take place on the evening of the last Monday in each month.

Article VIII.

Called meetings may be had by order of the president, or upon the written application to him of five members; notice of called meetings must be given each member, and no business can be transacted at called meeting unless recited in the notice calling said meeting.

Article IX.

The officers and the executive committee of this association shall be chosen on the first Monday in January in each year; failing to elect at the regular meeting, the president shall call a special meeting for the purpose of which meeting members must be notified.

Article X.

Ten members shall constitute a quorum of the executive committee, for the transaction of business.

Article XI.

Any member may withdraw from the association by giving notice to the secretary and paying his dues in full to the time of giving said notice.

428 Article XII.

This association shall not create any indebtedness above fifty dollars without the consent of two-thirds of the members present at the monthly meeting when the vote is taken; notice to create such indebtedness must be given in writing at the monthly meeting preceding.

Article XIII.

No alteration or amendment of the constitution shall be made unless the same be proposed at a regular meeting, when, if accepted by a majority vote, it shall be entered upon the minutes and lie over until the next monthly meeting, when it will require the same

tion of two-thirds of the members present before it becomes a part of this constitution.

By-laws.

Article I.

Duties of Officers.

1. The president shall preside at all meetings of the association and of the executive committee, sign all orders on the treasurer, appoint all committees not otherwise provided for, and give the casting vote in case of a tie upon any proposition.

2. The first vice-president in the absence of the president shall perform his duties, and in the absence of both, the second vice-president shall preside, and in the absence of all three a chairman may be chosen.

3. The secretary shall keep a full and accurate record of the proceedings of the association, and give such notices to members as may be required, countersign all orders on the treasurer, carefully file all reports of committees and perform such other duties as may be required of him.

The treasurer shall keep a correct account with each member, receive all moneys due the association, keep a correct account of the same, and pay it out only on the orders of the president, countersigned by the secretary; he shall make monthly statements of his receipts and disbursements to the association.

Article II.

Executive Committee.

The executive committee shall require a good and sufficient bond of the treasurer; it will have charge of the rooms and other
429 property of the association. The committee shall have the right to assess fines against its own members for non-attendance, said fines shall not exceed one dollar for each offence. Expenditures of ten dollars or under may be made by the executive committee, but if the expenditure exceeds ten dollars, it must be referred to the association. The committee shall make monthly reports of their transactions to the association.

Article III.

Transportation Committee.

A committee of three members, know- as the transportation committee, shall be elected by the executive committee at the first meeting after the annual election. It shall be the duty of said committee to secure the best rates of freights possible to and from Chattanooga. Said committee shall also have power to direct the members of the association to ship over any line which in their judgment they think most advantageous. The members of this committee shall be *ex officio* members of the executive committee.

Article VI.

Duties of Committees.

Each committee shall attend promptly to the duties for which it was created. The president, with the consent of the executive committee, shall have power to remove any member or members of appointed committees for neglect of duties, and appoint others in their stead. Each committee shall report to the association at monthly meetings.

Article V.

Membership.

Application for membership must be made in writing at stated meetings; the applicant must sign his name in person, and accompany the application with the fee; the application must be referred to the executive committee and lie over until the next monthly meeting, when it shall be balloted for by secret ballot, and it shall require a two-thirds majority of the members present to elect.

Article VI.

Dues.

Each member shall pay to the treasurer one dollar quar-
430 terly in advance; any members in arrears for six months shall be proceeded against as provided for in article VI of the constitution.

Article VII.

Order of Business.

At all monthly meetings of the association the following order of business shall be observed unless otherwise ordered by the association:

1. Reading minutes.
2. Report of executive committee.
3. Report of transportation committee.
4. Reports of other committees.
5. Report of treasurer.
6. Election of members.
7. Unfinished business.
8. New business.

Article VIII.

No alteration or amendment of these by-laws shall be made unless the same may be made in writing at a monthly meeting, when it shall be entered upon the minutes and lie over until the next meeting, when it shall require a two-thirds majority of the members present.

Officers.

M. J. O'Brien, president; W. O. Peeples, 1st vice-president; C. P. Robertson, 2nd vice-president; I. B. Merriam, secretary; D. J. Pierce, treasurer.

Executive committee: T. H. Payne, D. B. Loveman, J. N. Trigg, F. Gibson, P. Lazard, chairman, M. J. O'Brien; secretary, Prosper Lazard.

Transportation committee: J. S. Martin, W. M. Nixon, J. P. Smartt.

Committee on taxation: I. B. Merriam, W. O. Peeples, T. H. Payne.

Claims and overcharges: C. P. Robertson, J. N. Trigg, F. Gibson.

Committee on laws: D. J. Pierce, T. H. Payne, Prosper Lazard.

Committee on printing: M. J. O'Brien, D. J. Pierce, Prosper Lazard.

Members of board of trade.

Butler & Co.,
Berry, James W.,
Block & Co., M.,
Caldwell, M. M.,
431 Crutchfield & Co.,
Calmus & Schwartz,
Cleage Bros.,
Davidson & Son,
Evans & Co., H. C.,
Ewing Bros.,
Friedman Bros.,
Fleming, P.,
Ford, N. C.,
Fischer & Bro., W. F.,
Nixon & Wester,
Nall & Co., A.,
Nicklin & Morrison,
Merriam & Vann,
Miller, Thos. V.,
Martin & Bro.,
McCall, J. P.,
Matthews, M. H.,
Moore & McMillin,
Miller & Cargill,
O'Brien, M. J.,
Peeples & Bros., W. O.,
Peak, W. F.,
Pyron, J. B.,
Pierce, D. J.,
Payne & Co., T. H.,
Peak, C. S.
Gibson, Lee & Co.,
Ghant Bros.,
Gottschalk, Jas.,
Griffiss, Jno. C.,
Harris, J. W.,
Hamilton & Co.,
Hulse, A. J.,
Heard, G. M. D.,
Hughes & Marquet,
Howard & Glover,
Jackson & Trigg,
Jarnagin, G. H.,
Loveman & Co., D. B.,
Lane & Bro.,
Robertson, C. P.,
Smartt & Oehmig,
Simpson, Sol.,
Snow, T. A.,
Shelton, C. C.,
Seeman & Co.,
Simpson, Joseph,
Thomasson & Son, L. L.,
Thompson, M. D.,
Tankesley, R. M.,
Timothy Bros. & Metz,
Vance & Kirby,
Wassman & Bros.,
Wilson, P. C.,
Warner & Co., J. H.,
Williams, J. T.

Rules for Government of the Executive Committee of the Board of Trade of Chattanooga.

Organization.

The committee at its first meeting after election shall organize by the selection of a vice-president and a secretary in addition to the president, who shall be the president of the board of trade as provided for by its constitution and by-laws.

Duties of Officers.

The president shall preside at all meetings, cast the deciding vote, appoint committees, assess fines, and perform all other executive duties. In the absence of the president the vice president shall preside. When the president and vice-president both are absent a chairman may be chosen. The secretary shall call the roll of this committee at the openings of its meetings, keep a correct
432 record of its proceedings, have charge of all its reports, records, books, etc., issue notices and perform all other duties pertaining to his office; shall collect and keep an account of all fines assessed against the members of this committee, and pay same out only by order of the committee on written order of the president.

Order of Business.

The meetings of the committee shall observe the following order of business, unless the rules are suspended and another order substituted for the present meeting:

1. Call of roll of members by secretary and assessment of fines against absentees.
2. Reading of minutes.
3. Reports of standing committees.
4. Unfinished business.
5. New business.
6. Miscellaneous business.

Meetings.

The regular meetings of this committee shall occur on the evening of the second and last Monday in each month, from April 1st to October 1st, at 8 p. m., and at 7.30 p. m. for the balance of the year. The secretary will give notice of meetings to members. Special meetings of this committee may be called by the president at the request of three members, in writing, setting forth the object of such meeting. No other business shall be transacted other than that named in such request.

Penalties.

Any member who shall be absent two consecutive meetings shall be fined fifty cents. Any officer who shall fail to be present at roll-call, or to furnish any book, record, report, key or other property

entrusted to his keeping, shall be fined fifty cents. Any member appointed on any committee, and accepting such appointment, and neglecting to perform such committee duty, shall be fined fifty cents. If parties so fined shall, at the next meeting of the committee, present a valid and sufficient excuse, the fine may be remitted by a two-thirds majority of the members present, otherwise it must be collected.

Arrearages.

Any officer or member who fails to pay his fines within one month from the time of their assessment, shall be expelled from the executive committee and another member elected in his stead.

433 *Publicity.*

No publication or advertisement of the proceedings of this committee, or any of its subcommittees, shall be made without the advice and consent of a majority of its members.

Date of Effect.

These rules shall take effect and be enforced as soon as printed and a copy furnished each member of this committee.

EXHIBIT No. 7.

Nashville, Chattanooga & St. Louis railway; office of general freight agent. G. R. KNOX, general freight agent.

Rates Eastern Cities to Nashville.

NASHVILLE, TENN., 8 *Nov.*, 1890.

Edwin Fitzgerald, Esq., traf. m'g'r, Knoxville, Tenn.

DEAR SIR: Referring to your telegram 6th, and my letter same date, I intended writing you fully on this matter yesterday according to my promise, but Mr. Culp was here all day, and as we did not get through with our matters until 7 o'clock last night, I did not have the opportunity of writing you.

No doubt you are familiar with trunk-line rates to Louisville, Cincinnati, Evansville, etc. They are, as you know, as follows, from New York:

To	1	2	3	4	5	6
Cincinnati	65	57	44	30	26	22
Louisville	75	65	50	35	30	25
Evansville	83	72	55	39	33	28

The totals to Nashville are fixed by adding following arbitraries charged by L. & N. R. R. as its proportion on eastern business Louisville to Nashville:

1	2	3	4	5	6
16	13	10	7	6	6

434 These arbitraries added to the trunk-line rates to Louisville make totals to Nashville, 91, 78, 60, 42, 36, 31, and these are the established rates from New York to Nashville.

I enclose herewith letter from Capt. T. M. Gallagher, G. F. A. U. P. & C. Packet Co., also Nashville & Evansville Packet Co., showing current rates in effect from Cincinnati, Louisville, Henderson and Evansville on general merchandise. In this connection would state I had personal interview with Capt. Ryman, president of above Cos., and he advises me these are outside figures, that on commoner classes of freight lower rates would be made. The rates quoted would be applied to what we term generally 1st and 2nd class freight, this is what river men mean by "general merchandise." On articles included in our 4, 5 and 6 classes they would make rate 10 to 12c. from Louisville and Cincinnati and 8 from Evansville. In this connection would state there are 3 boats per week for about 9 months of the year from Paducah to Nashville, one through boat a week Evansville to Nashville, and one through boat a week Cairo to Nashville, but from Pittsburg, Pa., Cincinnati, Louisville, Evansville, etc., there are almost daily packets handling Nashville business and reshipping at Paducah, so that during 9 months of the year Nashville merchants, if they were using the river, could have their freight handled with little or no delay.

By adding river rates to the trunk-lines rates from Cincinnati, Evansville, you will find that in many cases the present rail rates can be cut.

Take 1st class to Cincinnati	65	
Add boat rate to Nashville	15	80 against 91.
2nd class to Cincinnati	57	
Add boat rate	15	72 against 78.
3rd class to Cincinnati	44	
Add boat rate	15	59 against 60.
4th class to Cincinnati	30	
Add boat rate	10	40 against 42.
5th class to C	26	
Add boat rate	10	36 against 36.
6th class to C	22	
Add boat rate	10	32 against 31.

435 I heard recently that quite a lot of queensware had been imported through some eastern port, which had been forwarded by rail to Pittsburg and put on boat at that point and reshipped at Paducah. Have not been able to get the figures for you on Pittsburg, but it is my impression it would make lowest combination of all, and this is the route we would have to watch more closely on heavy 4th and 5th classes and without having the figures

before me, think the rail rates New York to Pittsburg added to river rates to Nashville would cut the all-rail rates on lower classes, but as you are in a hurry for the information I do not wait to get this for you. If I can be of any further service to you in this matter command me. Hope failure to write you yesterday has not seriously inconvenienced you.

Your- truly, GEO. R. KNOX, *G. F. A.*

Before the Interstate Commerce Commission.

THE BOARD OF TRADE OF CHATTANOOGA *vs.* THE EAST TENNESSEE, VIRGINIA & GEORGIA RAILway Company *et al.* } No. 259.

I, Edward A. Moseley, secretary of the Interstate Commerce Commission, hereby certify that the foregoing is the testimony of witnesses taken before the Interstate Commerce Commission in the above-entitled cause, and also the tariffs and other documents used by the commission as a basis for the report of the commission in said case, which was decided December 13, 1892.

Witness my hand as secretary of said commission this the 8th day of December, 1897.

EDW. A. MOSELEY,
Secretary of the Interstate Commerce Commission.

And afterwards, to wit, on the 22nd day of December, A. D. 1897, a certain stipulation was filed in the clerk's office of said court, which said stipulation is clothed in the words and figures following, to wit:

436 *Stipulation.*

(Endorsed:) Filed Dec. 22, 1897. Henry O. Ewing, Clerk.

In the Circuit Court of the United States for the Eastern District of Tennessee.

THE INTERSTATE COMMERCE COMMISSION *vs.* THE EAST TENNESSEE, VIRGINIA & GEORGIA R'Y Co. *et al.* } In Equity. No. 384.

In this case, it is stipulated and agreed by counsel for the complainant and by counsel for the defendants that in a certain case pending before the Interstate Commerce Commission, known as "In the matter of alleged unlawful charges for the transportation of coal by the Louisville & Nashville Railroad Company," decided November 17, 1892, it was, among other things, found and reported as facts by said commission that the "mines on the Henderson division of the Louisville & Nashville road in Kentucky are grouped along the road some twenty miles, and are from 90 to 110 miles from Nashville to Earlington, the largest shipping point on that division is 105 miles from Nashville."

"From the various mines on the Henderson division to Memphis the distance is from 250 to 270 miles;" that "at present there is a uniform rate from the Western Kentucky mines to Nashville of $1.00 per ton to all persons on the kinds of coal known as 'run of mines, nut and slack,' and this rate does not vary with the season. On 'screened coal' the rate is $1.15 per ton during the period from April 1st to Sept. 1st, while for the remainder of the year, viz., from September 1st to April 1st, it has been fixed at $1.40 per ton."

"As above noted there is an unvarying rate on all coal at all seasons of $1.40 from the same mines to Memphis."

And that the defendant set up in explanation of the relatively low rate from a distance standpoint to Memphis as compared with the rate to Nashville, among other things, competition at Memphis, for coal brought by the rivers from Pittsburg.

It is further stipulated that John B. Adkinson, vice-president and treasurer of the St. Bernard Coal Company, at Earlington, testified as a witness for the defendant in said case as follows:

437 "Q. 6. How was coal brought to the Nashville market before the mines on the Henderson division and the Owensboro and Nashville division of the Louisville & Nashville railroad were opened and furnished transportation facilities to that market?

A. When my company first shipped coal to Nashville in 1871, the market in Nashville was largely supplied with coal that came down the Cumberland river in boats with some Pittsburg coal that came up the river in boats.

Q. 7. Does any considerable quantity of coal now come to Nashville by river and if not, why not?

A. I think no coal comes to Nashville by river at this time. The expense of river transportation, with its attendant losses, drove the river coal from the market, not being able to compete with the railroad coal."

It is further stipulated that the foregoing facts as found by the commission, and the foregoing testimony of said John B. Atkinson in said case may be used as evidence in this case, subject to objections to its competency and relevancy. All formal objections are waived.

This 8th day of December, 1897.

L. A. SHAVER,
Counsel for the Interstate Commerce Commission.
ED. BAXTER,
Counsel for Defendants.

And afterwards, to wit, on the 2nd day of February, A. D. 1898, the opinion of the court was filed in the clerk's office of said court, which said opinion is clothed in the words and figures following, to wit:

Opinion of the Court.

(Endorsed:) Filed Feb. 2, 1898. Crawford T. Johnson, Deputy Clerk.

Circuit Court of the United States for the Eastern District of Tennessee, Southern Division. In Equity.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILWAY COMPANY *et al.*

This case originated in a complaint lodged with the Inter-
438 state Commerce Commission and filed April 9, 1890, by the Board of Trade of Chattanooga, an association of merchants and manufacturers of that city, charging: First, that the respondents, being engaged in interstate commerce as common carriers and transporting freight and participating in through rates of charges for transportation thereof, from Boston, New York, Philadelphia and Baltimore, designated as eastern seaboard points, to Nashville, Memphis and Chattanooga, in the State of Tennessee, charged through rates to Chattanooga which were unjust and unreasonable in themselves as well as relatively to those to Nashville and Memphis; second, that Nashville, Memphis and Chattanooga were competitors for business in the same territory, and that the through rates charged and participated in by the respondents were much lower to Nashville and Memphis than to Chattanooga "for transporting like property from said seaboard points under the same or substantially the same circumstances and conditions," and that the respondents were thus guilty of unjust discrimination against Chattanooga in giving an undue preference to Nashville and Memphis; and, third, that the respondents under such through rates charged and received a greater compensation for the transportation of a "like kind of property under substantially similar circumstances and conditions" from said eastern seaboard points to Chattanooga than they charged for such transportation over their several lines through Chattanooga to Nashville and Memphis, which last-mentioned cities are 151 and 310 miles, respectively, farther from said eastern seaboard points than is Chattanooga. In terms it is alleged that each of the first four sections of the act to regulate commerce is violated. In support of these allegations the complainant referred to the tariffs on file with the commission, and exhibited tables illustrating the alleged discrimination and the unlawful character of the rates complained of in other respects. The complainant prayed for an order requiring the respondents to cease and desist from said violations of the act to regulate commerce and that they be required to transport property to Chattanooga from eastern seaboard points at such rates as the commission might decide to be just, and also that such order require the respondents to cease trans-

porting property from eastern seaboard points to the cities of Nashville and Memphis for lower rates of freight than they charged for transporting like property to the city of Chattanooga, and there was also a prayer for such other and further relief as the commission might deem necessary to grant relief to the merchants and
439 manufacturers of Chattanooga. Notice was given to the respondents of the filing of this complaint, and most of the respondents appeared and answered, setting up various defenses, the details of which it is unnecessary to go into, it being sufficient for the present purpose to say that the answers put in issue the question whether the rates charged by the companies on through freight from eastern seaboard points to Chattanooga were unjust and unreasonable in themselves, and also the question whether the circumstances and conditions affecting rates at Nashville and Memphis on through freight were so far dissimilar from those existing at Chattanooga as to justify them in making to the three cities the relative rates complained of.

A hearing was had and testimony taken before the commission, and the commission after having fully heard the counsel for the complainant and for many of the various railroad companies announced its decision upon the matter of the said complaint on Dec. 30, 1892. Its conclusion was that the complaint was sustained, upon grounds and reasons hereafter to be referred to, and thereupon the commission ordered and required the respondents to "cease and desist from making, enforcing or receiving any higher rates for such transportation aforesaid to Chattanooga than are or may be at any time accepted by them for like transportation to Nashville." The respondents were notified of the order, but refused to comply with it, whereupon the commission applied to this court, sitting in equity, under the sixteenth section of the act to regulate commerce, praying that the court should by proper process restrain the respondents from continuing the violation and disobedience of the order of the commission. Notice was given to the respondents of the filing of the petition, and many of them appeared and answered. Each side took further proof, and the case was finally submitted to the court on the report and opinion of the commission, and further testimony taken in this court. From this outline of

The History of the Proceedings

it is seen that the matter has been pending for a long time, and it might have happened that some change of circumstances should have taken place between the making of the complaint to the commission and the final submission of the matter to the court. But the additional testimony above referred to has been quite recently taken and seems to indicate that the circumstances remain substantially as they were in the beginning, and the case has
440 been argued and submitted here without any reference to a change in the conditions existing at the present time. It is therefore proper to assume that there is nothing in the *daily* which

has occurred to affect the conclusions which should be reached upon the original complaint.

The case has been fully and elaborately argued, not only at the bar, but in the briefs which have been since submitted. At the hearing it was intimated by the court that in the investigation it must make it would be important to consider whether the commission had in reaching its conclusion refused to consider and give due effect to the difference in the conditions existing respectively at Nashville and Chattanooga affecting the subject of through rates, and among them competition between carriers taking freight to and from the former place, and that this might be considered in determining whether the order which it had made was a lawful one. But upon further reference to section 16 of the commerce act and the decisions of the Supreme Court construing them it appears very clearly that the scope of the power and duty of the court is wider than that thus indicated. By that section it is provided that upon an application by the commission to the circuit court of the United States for a mandate requiring obedience to an order of the commission and notice of such application to the common carrier refusing such obedience the court shall proceed to hear and determine the matter speedily as a court of equity, without the formal pleadings and proceedings customarily employed in such courts, but in such manner as to do justice in the premises, "and to this end such court shall have power if it think fit to direct and prosecute in such mode and by such persons as it may appoint all such inquiries as the court may think needful to enable it to form a just judgment in the matter of such petition, and on such hearing the findings of fact in the report of said commission shall be *prima facie* evidence of the matters therein stated."

Thereupon the court, if it shall find upon all the matters before it—"the whole body of the evidence"—that the order was a lawful one, and has been disobeyed, is required to issue its mandatory process to compel the observance of the order. Under these provisions it has been held that the court is not restricted in its inquiry to the findings of the commission either as to the law or fact on any of the questions involved, but proceeds to determine all such questions for itself, giving due effect to the findings of fact by the commission as *prima facie* evidence of the facts reported.

441 It will thus be seen that whether the commission should or should not hold as a matter of law that it could accord to the railway carriers the privilege of fixing their rates upon consideration of the differing conditions, such as competition at a given point from other carriers who are likewise amenable to the law, such conclusion would in nowise affect the duty of the court to inquire and determine whether the railway carriers had such privilege or not, and if it should be held that such privilege existed to give effect to it at one of the grounds of its decision.

are only *prima facie* evidence. The court may direct further evidence to be taken, and if it shall finally appear that the facts are otherwise than as reported the court would be governed by the facts as found by itself in forming its judgment.

In the present case the commission put its order upon the ground that the defendants had not the right in view of the fact, that no previous authority had been given by the commission to exercise that privilege, to depart from the rule against charging more for a short than for a long haul, because of a different condition arising from the competition at Nashville by other carriers, part of whom were railroad companies, engaged in through traffic with the East. In this undoubtedly it was in error. The contrary doctrine is now well established. But this error is not material. The legal reason given may be wrong and the order right if upon the facts the latter should be found by the court to be warranted by law. Nor would it affect the duty of the court if the commission had founded its order upon one provision of the act and the facts brought the case within some other. The question therefore is whether the order made was a lawful one in the circumstances as they are made to appear. Now, I think that no one can read these schedules fixing the rates of through traffic from the seaboard to Chattanooga, and to Nashville and Memphis through Chattanooga, without being instantly and strongly impressed that there is something wrong in the principle on which such rates are adjusted, and that the equality which the commerce act was enacted to secure has been utterly disregarded.

It appears from the record that the through rates for freight from New York and Boston to Chattanooga, Nashville, and Memphis, respectively, which are complained of, are as follows:

442 First class:

To Chattanooga	$1 14
To Nashville (151 miles further on)	91
To Memphis (310 miles beyond Chattanooga)	1 00

Second class:

To Chattanooga	98
To Nashville	78
To Memphis	85

Third class:

To Chattanooga	86
To Nashville	60
To Memphis	65

Fourth class:

To Chattanooga	73
To Nashville	42
To Memphis	45

Fifth class:

To Chattanooga	60
To Nashville	36
To Memphis	38

Sixth class:

To Chattanooga	49
To Nashville	31
To Memphis	35

From this it appears that

Comparing the Rates to Chattanooga and Nashville

although the distance to Chattanooga is 151 miles less than to Nashville the charge on first-class freight to the former place is 25 per cent. higher than to the latter; on second class it is 26 per cent higher; on third class it is 43 per cent. higher; on fourth class it is 74 per cent. higher; on fifth class it is 67 per cent. higher, and on sixth class 58 per cent. If the charges are reckoned by mileage, they are about 100 per cent. higher on freight of the three lower classes from New York to Chattanooga than they are to Nashville, and over 67 per cent. higher in the aggregate of rates for all the classes. The result is that the merchants of Chattanooga can ship their goods from the East through to Nashville on the Nashville rate and then ship them back to Chattanooga on local rates
443 at less cost than the charges on an original shipment direct to Chattanooga. The natural result is that the merchants and tradesmen of Nashville can undersell the merchants and tradesmen of Chattanooga in much of the commercial sphere of the latter place, for the Nashville people can ship directly to the points tributary to Chattanooga; and the evidence shows it is the practical result. There is evidence also tending to show that the commercial business of Chattanooga has for years been stagnating. It may be and probably is true that this is in part due to other causes, but considering that no small part of the value of goods shipped over the long distance from the eastern markets to Chattanooga is represented by the freight rates it has borne, it would be manifest without other evidence that the great disparity of rates above shown would go far to crush out the commercial life of a city so heavily burdened.

Comparison of the Rates to Memphis and to Chattanooga

is not so important in the present case, because, as is said by the commission, the greater proximity of Nashville to Chattanooga renders the question between the two last-named places the leading issue. Nevertheless, a reference to the Memphis rate is of value in determining whether the rates to Chattanooga are reasonable rates, it appearing that, though the distance is nearly one-third greater than to Chattanooga from the East, rates are accepted for the Mem-

phis business considerably less than those at Chattanooga. The rate per mile of transportation shows a great disparity and this disparity goes in bulk or nearly so into the profits. It is conceded that

The Competition at Nashville

should be taken into account, though my impression is strong that the competition arising from the rather limited navigability of the Cumberland river is made much more of than the real facts justify. Without much regard to the matter of rates, the carriage of freight by the navigation of such streams as the Cumberland has been almost entirely discontinued in recent years. The delays, the hazards and uncertainties which attend the navigation of such rivers have induced shippers to greatly prefer and to rely upon transportation by rail. It is conceded also that the railroad companies have a just right to insist that their interests and those of the stockholders who have invested their money in the business should also be considered; and the court, in my opinion,
444 would not be faithful to its duty if it should ignore those interests or deny them legal protection. But on the other hand, the just claims of the public, and especially the relative rights of communities and the individuals who constitute them, to the public service undertaken by common carriers must be also taken into account and protected. All these things are to be put in the balance and to each party should be given its right according to the facts as they appear in every case.

The Duty Which the Court Owes to the Public

is surely not less than that which it owes to the carriers. It is admitted by the court that rate-making is the peculiar province of the carriers, and their schedules should not be interfered with by the commission or the courts unless they are against conscience, and by that I mean a conscience instructed and regulated by the law. But it is to be remembered that the railroad business of the country is conducted by able men, animated, as it is right to suppose, with the desire to promote the interests of those whom they serve. Further to promote the efficiency of their work, the officers of the various companies have their associations for the purpose of comparing, studying and adjusting the rates of traffic on their several lines. In the absence of the other party they have everything their own way. It would be expecting something not encountered or expected in other branches of business if we anticipated that they would assume a judicial attitude toward those with whom their business is to be done. And so it is liable to happen that in devising a scheme of rates to compensate for the moderate profits on some part of their traffic which is affected by competition, by heavier rates on other parties and at places where they are not so affected.

Injustice May Be Done in the Disproportion of the Burden Laid upon the Different Communities.

And that is what I think has happened here. There is in this no impeachment of the integrity of any one. It is not a question of intention, however, but is whether the thing done is in contravention of the statute. Conceding that some allowance should be made for the conditions at Nashville, the rigor of the rule of the long and short haul clause of the fourth section moderated to some extent, as it was held might be done in the case of The Commission *vs.* The Alabama Midland Railway Company, 168 U. S., 144, the dis-
445 proportion in the present case is too gross. If for such causes as existed here such unequal charges can be made along the same line of traffic the inevitable result must be that the commerce act will prove of no value and the leading principle of the common law relating to the same general subject will be overthrown.

The railroads cover the country like a web. Only the unproductive and inaccessible places are isolated from their routes. The places where they meet and cross each other and thus come in competition are almost innumerable. They are thickly located in all the commercial parts of the country. If the fact of such competition is allowed to become a dominating factor in fixing the relative charges of transportation to the different places along the lines, those communities where there is no competition must be blighted by the disadvantage with which they are burdened and the favored places grow prosperous in the sacrifice of others. Counsel for the respondents, after noting the wider distance between competitive points in the southern portion of the country, says: "It is not unusual for a southern railroad to run for a hundred miles from one competitive point to another, where the intervening territory is very poor and sparsely settled. The distance between such competitive points is so great that it is practicable for railroads to make a greater charge for a shorter than for a longer haul."

With this as the rule in adjusting rates, it seems certain that the poor places must become poorer and the localities more sparsely settled than ever. At least this would seem to be the very probable tendency. And although I must express an opinion upon a mere question of policy for the carriers with much diffidence, I am very strongly inclined to the belief that their interests would in the long run be better promoted by

Adhering More Closely to the Rules of the Statute 9

than was done in the present case or is likely to be done under the practice which their counsel endeavors to justify. And public policy would also be advanced by the opposite course not only in the encouragement which would thus be given to the distribution of commerce and population, but also in extending that equality of privilege which it is one of the prime objects of legislation to promote.

I am aware that these observations may be thought somewhat general. But the subject must necessarily be treated on broad lines. The commerce act is drawn upon such, and the matters above referred to touch and deeply affect the consideration of cases of this character.

446 The duty devolved upon the court by this act is new and somewhat difficult. In my opinion, it can be most wisely and profitably discharged by estimating the special facts of each case in the light of the general principles which Congress has embodied in the law. No test is given by the act for determining the extent or nature of the dissimilarity of conditions which will make it "substantial," and the question is left to be determined in the first instance by the commission and ultimately by the court upon each case as it arises. There is nothing singular in this. It is another and new instance of questions for which the law furnishes no definite test. For example: Where negligence in the management of a railroad is imputed and legal liability is sought to be charged thereon, the issue is a broad one and its determination must depend upon the application of a general test; and it must happen that judges and juries who are called to decide the question are much less familiar with the details of the business and the requirements of safe management than those who, from many years' experience, have become expert in such matters; and so, where questions of reasonableness are presented, or other like questions of a general character. But there is a necessity that such questions be decided and the courts and juries are delegated to decide them, however much of skill and experience may be involved in the controversy or the solution of it.

As the circumstances vary infinitely and constantly in the course of such business it would seem that Congress must have intended something unusual and peculiar, out of the ordinary course, not ordinarily incident to the business, as that would create a substantial dissimilarity. For otherwise the vast bulk of transportation would not be subject to the rule at all.

The case of The Commission *vs.* The Alabama Midland Railway Company, above cited, is much relied upon by counsel for the railroad companies as giving warrant for the discrimination made in the present case, but the Supreme Court in that case, while reaffirming the doctrine that competition between railway carriers might and frequently ought to be considered in adjusting rates under the long and short haul clause, yet took pains to prevent the inference from its opinion that it should be regarded as a controlling consideration. In that case the discrepancy in rates was slighter than that here shown, and the competition was by water transportation on a great river navigable at all seasons of the year and opening into

447 the Gulf. Both the courts below had concurred in holding that the commission was wrong in thinking the disparity of charges was too great in view of the facts, and the Supreme Court did not find sufficient reason for reversing their decree.

Reasonableness of Present Rates.

It is assumed in argument by counsel in making defense that the rates to Chattanooga are just and reasonable in themselves. This, it is said, is conceded, and upon the premises it is urged, in substances, that the public at Chattanooga has no right to complain if the respondents lower their rates to Nashville. In one sense this is true. But the suggestion is fruitful of other considerations. The question whether the rates are just and reasonable in themselves is in some measure a relative one, that is to say, it may be tested by a comparison of the particular rates with those accepted elsewhere for a similar service, and whether the instances thus employed are or are not such as by their relation to the case in hand are subject to the operation of some other provision of the commerce act, is immaterial.

Besides, I think the question of the justness and reasonableness of rates under the first section is colored by the other provisions of the law and by the general policy of the whole enactment, which is to effect the equality of charges. And at all events it seems to me clear, that the charges accepted for a longer haul may be referred to for the purpose of considering the reasonableness of the charges made for the shorter haul. Such comparisons are applied to every other kind of business, and the fact that there may be competition in such business would not be a controlling consideration, for the presumption would always be that the compensation charged for the service or thing is sufficient to be reasonable. The presumption is not, of course, a conclusive one, but would seem a fair one in the absence of special circumstances.

It is not according to my understanding that it is conceded that the rates to Chattanooga are just and reasonable in themselves.

The Contrary is Alleged

in the complaint made to the commission and the view of the latter seems to have been otherwise, though its order is not put upon that ground. If, as I gather from the testimony, the through rates to Nashville afford a fair profit to the carriers, whether the
448 northern trunk lines or the respondents (and it is reasonable to suppose they would not engage in the business without it), there is substantial ground for contending that the same charge for carrying freight from the East to Chattanooga would afford a reasonable profit and would therefore be a reasonable charge. If the respondents are allowed, as they are by the order of the commission, to make the same charge for carrying to Chattanooga as for carrying to Nashville, the rate, having regard to the difference in distance, would be about 16½ per cent. higher to Chattanooga than that which they charge to Nashville, and the percentage is an increment of the profits. It may be modified slightly by circumstances, none of which are perceived, however, of any importance.

If railway carriers engage in a competitive struggle for business at a place where they meet and underbid each other or other carriers

to a point which is not in itself remunerative, can they turn back on the line, and, taking advantage of the conditions existing at other localities, arising either from the fact that there is no opportunity for competition or from the fact that by concert of the carriers there is none, charge such rates for the shorter haul as shall make good their lack of profits in competitive business, and even up the profits on their whole business to the point they set before themselves as reasonable? To the proposition thus roundly stated, no doubt counsel for the carriers would say that they could not contend for it.

And yet this is the result reached by the not very indirect steps of the argument. And the proposition itself cannot be admitted without "tearing up by the roots" the whole scheme of the commerce act. This is one of the considerations tending to minimize somewhat the privilege arising from competition. In this connection, and as bearing upon the subject now under discussion, it is proper to observe with reference to the considerations resulting from a comparison of the volume of traffic between the seaboard points and Nashville, that it appears to be about equally divided between the northern and southern lines.

In the full and elaborate brief of counsel for the railways several reasons are advanced why it would be difficult to so readjust the rates as not to discriminate against Chattanooga. Attention has been given to all of them. But none of them, in my opinion, rests on any sufficient ground or constitutes any valid justification. One of these reasons is so striking and significant that it deserves special consideration. It is urged that

449 *The Louisville and Nashville Railroad Company is Vitally Interested*

in maintaining the commercial importance of Nashville, and cannot, with due regard to that purpose, so adjust the rates at that place as to enable the respondents to do otherwise than discriminate against Chattanooga. But it appears that that company owns and controls a majority of the stock of the Nashville, Chattanooga and St. Louis Railway Company, the respondent carrier which constitutes that part of the through lines which extends from Chattanooga to Nashville, and fixes the rates for that road. It is, therefore, in a position to ensure to Nashville such concessions as to advance its favoring purpose with reference to that city. It really has no competition there unless it be from the navigation of the Cumberland river.

Referring again to that feature of the case,

Compare the Situation of Chattanooga with that of Nashville

in that regard. The former is only 443 miles by rail from the terminus of water transportation at Charleston and less than that from Savannah, both of which places have uninterrupted communication by steam and sail with New York and the other northeastern seaboard cities. The route is not more circuitous by either place from the East to Chattanooga than by the Cumberland river

to Nashville. The rail portion of the latter route is very much greater than that of the route to Chattanooga when the transportation is partly by rail and partly by water.

Chattanooga is So Much Better Situated in Its Relation to the Eastern Ports,

if it is allowed the legitimate benefit of competition by water transportation, that it is very difficult to find any just reason why the charges to that place should be so out of proportion to those at Nashville.

Chattanooga, Too, Has More Railroads.

They might compete there if they would. They do not think it to their interest to do so. And thus it is that Chattanooga, with a location nearer to the eastern seaboard ports, and having many more railroads than Nashville, is yet denied the benefit of that advantage by reason of the competition at Nashville of one
450 railroad with the navigation of the Cumberland river, an element of trifling importance when compared with the transportation by sea on the route to Chattanooga. The natural advantages greatly favor the latter place. In my opinion the faculty of rate-making has here completely frustrated the law. The scope of the statute is universal, and all the public in every part of the country is entitled to enjoy its benefits. Nor is it a piece of shreds and patches with large rents for great mischiefs to flourish in.

Now for the purpose to increase the commercial prosperity of Nashville is in itself a laudable one, and the court would be far from having any inclination to obstruct it when it is pursued in a lawful way. It is to be hoped and believed, however, that the carriers will be able to find a way to remedy the injustice of the present situation without prejudice to any beneficent purpose toward Nashville. But it is a hard measure of justice to Chattanooga if the upbuilding of the one city is to be done at the charge of the other, by selecting the latter as one to bear the oppressive rates which shall go to make up for the moderate rates charged at the former. Moreover, the reason given shows the estimate which railway carriers themselves have of the effect of their freight rates upon the commercial prosperity of the localities subject to them.

Many topics connected with the subject of schedule-making have been thoroughly and ingeniously discussed. The paths of all these arguments submitted lead to these results:

The Conditions at Nashville Are Dissimilar to Those of Chattanooga.

This fact suppresses the long and short haul provision and justifies discrimination; the extent of the discrimination must be confided to the judgment of the railway officials, whose ability and experience best qualify them for the task. Nowhere in the argument is there any concession or suggestion of any conclusion other than this. All avenues leading elsewhere are carefully closed. If this

be the ground upon which we come, there is nothing for the commission or the court to do but to take notice of the fact that the conditions are dissimilar and abandon all further inquiry. Of course, it is fundamental that no such proposition as this can be admitted, whether we consider the case under the third or (as I think) under the fourth section of the act. Congress, after prescribing certain rules and regulations for such business and to guard against
451 unfair and unjust discrimination in the making of rates, provided a commission and charged it with the supervision of the conduct of railway carriers and with the duty of requiring and enforcing compliance with the rules and regulations of the act.

To secure judicial inquiry and determination of questions between the commission and the carriers arising in the course of business, and process adapted to give effect to such determination, jurisdiction was established in the circuit courts for those purposes. Congress must be presumed to have understood that the courts would not be so adept as the carriers in the intricacies of schedule-making and the adjustment of rates, but it nevertheless committed the ultimate power of determining right and justice in such matters to such measure of sound judgment, good sense and just discrimination as it assumed the courts might possess. This is all that can be invoked, but to this the public as well as the carriers are undoubtedly entitled. I have elsewhere indicated my opinion to be in substance that the question coming before the courts can best be decided upon a field somewhat removed from the labyrinth of the details of tariff schedules and in more unobstructed view of the larger and more controlling facts of the case.

I am aware that the commission on Dec. 31 last, in announcing its opinion in the case of The Savannah Bureau of Freight and Transportation *vs.* The Charleston and Savannah Railway Company, evidently disheartened by the adverse rulings of the Supreme Court in recent cases, more especially those of The Commission *vs.* The Cincinnati, New Orleans and Texas Pacific Railway Company, 167 U. S., 479, and The Commission *vs.* The Alabama Midland Railway Company, 168 U. S., 144, seems to give up section 4 as of no force or effect in any case where the conditions are not "substantially similar." After referring to its former holding that competition between carries subject to the statute did not create such dissimilarity of conditions as would justify discrimination, the commission goes on to say: "Since then, however, the Supreme Court of the United States, by its decision in the case, Interstate Commerce Commission *vs.* The Alabama Midland Railway Company, decided Nov. 8, 1897, 168 U. S., 144, has determined that this view of the law is erroneous, and that railway competition may create such dissimilar circumstances and conditions as exempt the carrier from an observance of the long and short haul provision.

Under this interpretation of the law as applied to the facts found in this case, we are of the opinion that

452 *The Charging of the Higher Rates to the Intermediate Points,*

as set forth, is not obnoxious to the fourth section. The section declares that the carrier shall not make the higher charge to the nearer point under 'substantially similar circumstances and conditions.' If the conditions and circumstances are not substantially similar, then the section does not apply, and the carrier is not bound to regard it in the making of its tariffs." Now, I do not understand that such a conclusion follows from that decision. On the contrary, I suppose that when a violation of the long and short haul provision is charged, competition is one of the elements which enter into the determination, whether the conditions are similar, and if dissimilarity is found, then the further question arises whether the dissimilarity is so great as to justify the discrimination which is complained of. The language of the act ought not to be tied up by such literal construction. If it were, then if it should be found that the dissimilarity of conditions is really in favor of the locality discriminated against, the provision would not apply, a result contrary to the manifest intent. In other words, my opinion is that the restraint of section 4 is to be applied upon the scale of comparison between the dissimilarity of conditions and the disparity of rates, and that it is competent under that section to restrain the exaction of the greater charge for the shorter haul, although there may be a substantial dissimilarity of conditions, provided the dissimilarity is not so great as to justify the discrimination made.

But the Long and Short Haul Clause

is only one of the specific provisions employed for the general purpose of the act. The third section underlies the fourth and supplies the principles on which it rests; so that, if the literal construction referred to be put upon the fourth section, the case would still be exposed to the third section, which forbids undue preference to one locality or the subjection of another to any undue disadvantage.

With respect to

The Power of the Court

to deal with the order of the commission, counsel for the respondents refer to the opinion delivered by me in the case of The Commission *vs.* The Detroit, Grand Haven and Milwaukee
453 Railroad Company, 57 Fed., 1005, that having regard to the language of the sixteenth section of the commerce act in prescribing the duty of the court to enforce the order of the commission if it is found to be lawful, and the lack of any words conferring authority to enforce any order other than that, the court was not vested with power to enforce any other order, even though it might be of opinion that some other order would be more appropriate. And this, as is said, was the view of the court of appeals of this circuit in the same case on appeal, 43 U. S. App., 308, 74 Fed., 803. Counsel for the commission contends that the Supreme Court in the

Alabama Midland Railway case expressed a different opinion, and that, therefore, the court is at liberty to mould the order of the commis*mission* to conform to the view which the court might think necessary "to do justice in the case." It seems somewhat doubtful whether the Supreme Court intended to pass upon this question, though possibly the language of the opinion may be susceptible of the construction contended for. Mr. Justice Shiras in delivering the opinion of the court, said, 168 U. S., at page —: "It has been uniformly held by the several circuit courts and the circuit courts of appeal, in such cases, that they are not restricted to the evidence adduced before the commission, nor to a consideration merely of the power of the commission to make the particular order under question, but that additional evidence may be put in by either party, and that the duty of the court is to decide, as a court of equity, upon the entire body of evidence." If the construction of this language contended for by counsel for the commission is correct, it must rest, I should presume, with deference upon the ground that the provision requiring the court to make such determination upon the facts as shall be just should be read in connection with the provision requiring the court, if it finds the order lawful, to issue proper process for its enforcement, and that when so read the meaning is that the court shall enforce the order with such modifications as it shall deem just, though, probably, not an entirely new and different order. But it does not appear to me to be necessary to determine how this is. It is now settled that the commission has no power by its order to fix rates, "either maximum or minimum or absolute." So neither has the court. If, therefore, the court had power to vary the order, it would still be restricted to the making an order enjoining the continuance of an unlawful practice. And this is the character of the order which the commission has made. The case is not one to which the second section is applicable. The inclination of my
454 opinion is that the complaint made to the commission is sustained upon the first section of the act, but as I am entirely satisfied that the practice complained of is in violation of the third and fourth sections, my judgment will proceed upon that ground. Although the reasons given by the commission do not in all respects correspond with the view here taken, my opinion is that upon the facts the order made is a just and reasonable one, and as near to my own sense of the justice of the case as any the court could devise and is at liberty upon this record to make, construing the order, as I do, to require the respondents to desist from charging a higher rate to Chattanooga than is charged, or shall be charged, to Nashville. Some range of discretion is undoubtedly vested in the commission in respect to the mode in which the provisions of the act shall be enforced. And so, upon like reasons, the court has a similar equitable discretion when a case is brought before it and the question is presented whether the order is a right one and fairly due upon the facts of the case. This is the plain inference from the language of the sixteenth section, which confides to the court in broad terms the power of determining what is just in the premises.

It is urged that the enforcement of this order will disturb the

whole scheme of freight rates in a wide section. I am fully conscious of the responsibility I must assume in giving effect to the order, though my expectation is that the companies will find less difficulty in conforming to the order than their counsel seems to fear. But, however, that may be, the duty of the court to right the injustice encountered is plain. Surely it cannot be contended that the rights of one community can be so entangled by a system of rates affecting many others also that justice cannot be done when those rights are denied or withheld.

The prayer of the petition of the commission is granted, and an order for process in accordance therewith will be entered.

SEVERENS, *J.*

And on the same day, to wit, the 2nd day of February, A. D. 1898, an entry was made upon the journal of said court, which said entry is clothed in the words and figures following, to wit:

455 Journal "F," page 361, February 2, 1898.

THE INTERSTATE COMMERCE COMMISSION }
vs.
E. T., V. & GA. R'Y CO. ET AL. }

This cause came on for hearing upon the petition, the answers thereto, proof taken, stipulations of counsel, the proceeding before the Interstate Commerce Commission and the entire record in the cause. It is hereby ordered, adjudged and decreed that the order made by the Interstate Commerce Commission be in all things affirmed and made the order of this court, and injunction will issue, restraining and enjoining the various defendants, each and all of them from further charging or receiving any greater compensation in the aggregate for the transportation of like kind of property from New York, Boston, Philadelphia, Baltimore or other Atlantic seaboard cities to Chattanooga than is or shall be from time to time charged over the same lines in the same direction to Nashville.

It is further ordered, adjudged and decreed that neither party to this cause recover costs against the other.

The foregoing is hereby approved for entry. This Feb'y 2nd, 1898.

H. F. SEVERENS, *U. S. Judge.*

And on the same day, to wit, the 2nd day of February, A. D. 1898, a certain petition for appeal was filed in the clerk's office of said court, which said petition for appeal is clothed in the words and figures following, to wit:

Petition for Appeal.

(Endorsed:) Filed Feb'y 2, 1898. Henry O. Ewing, Clk.

In the Circuit Court of the United States for the Eastern District of Tennessee, at Chattanooga, Tennessee, October Term, 1897.

THE INTERSTATE COMMERCE COMMISSION, Complainant,
vs.
THE EAST TENNESSEE, VIRGINIA & GEORGIA Railway Company; The Norfolk & Western Railroad Company; The Norfolk & Western Railway Company; The Old Dominion Steamship Company; The Western & Atlantic Railroad Company; The Central Railroad and Banking Company of Georgia, and The Louisville & Nashville Railroad Company, Sued by the Name of The Georgia Railroad Company; The Ocean Steamship Company; The Cincinnati, New Orleans & Texas Pacific Railway Company; The Nashville, Chattanooga & St. Louis Railway; The Southern Railway Company; The Central Railroad and Banking Company of Georgia, and The Central of Georgia Railway Company, Defendants.

456 In Equity. No. 384.

The above-named defendants, The East Tennessee, Virginia & Georgia Railway Company; The Norfolk & Western Railroad Company; The Norfolk & Western Railway Company; The Old Dominion Steamship Company; The Western & Atlantic Railroad Company; The Central Railroad and Banking Company of Georgia, and The Louisville & Nashville Railroad Company, sued by the name of The Georgia Railroad Company; The Ocean Steamship Company; The Cincinnati, New Orleans & Texas Pacific Railway Company; The Nashville, Chattanooga & St. Louis Railway; The Southern Railway Company; The Central Railroad and Banking Company of Georgia; and The Central of Georgia Railway Company, conceiving themselves aggrieved by the decree entered in this cause on the 2nd day of February, 1898, do hereby appeal from said decree to the United States circuit court of appeals for the sixth circuit, and they pray that their said appeal may be allowed, and that a transcript of the record and proceedings and paper, upon which said decree was made, duly authenticated, may be sent to the United States circuit court of appeals for the sixth circuit.

ED. BAXTER,
Solicitor for the Above-named Defendants.

Chattanooga, Tennessee, February 2nd, 1898.

457 And on the same day, to wit, the 2nd day of February, A. D. 1898, a certain assignment of errors was filed in the clerk's office of said court, which said assignment of errors is clothed in the words and figures following, to wit:

Assignment of Errors.

(Endorsed:) Filed Febr'y 2, 1898. Henry O. Ewing, Clerk.

In the Circuit Court of the United States for the Eastern District of Tennessee, at Chattanooga, Tennessee, October Term, 1897.

THE INTERSTATE COMMERCE COMMISSION, Complainant, *vs.* THE EAST TENNESSEE, VIRGINIA & GEORGIA Railway Company, The Norfolk & Western Railroad Company, The Norfolk & Western Railway Company, The Old Dominion Steamship Company, The Western & Atlantic Railroad Company, The Central Railroad and Banking Company of Georgia, and The Louisville & Nashville Railroad Company, Sued by the Name of The Georgia Railroad Company; The Ocean Steamship Company, The Cincinnati, New Orleans & Texas Pacific Railway Company, The Nashville, Chattanooga & St. Louis Railway, The Southern Railway Company, The Central Railroad and Banking Company of Georgia, and The Central of Georgia Railway Company, Defendants.	In Equity. No. 384.

On the 2nd day of February, in the year of our Lord eighteen hundred and ninety-eight, in the city of Chattanooga and State of Tennessee, came the defendants, The East Tennessee, Virginia & Georgia Railway Company, The Norfolk & Western Railway Company, The Norfolk & Western Railroad Company, The Old Dominion Steamship Company, The Western & Atlantic Railroad Company, The Central Railroad & Banking Company of Georgia, and The Louisville & Nashville Railroad Company, sued
458 by the name of The Georgia Railroad Company; The Ocean Steamship Company, The Cincinnati, New Orleans & Texas Pacific Railway Company, The Nashville, Chattanooga & St. Louis Railway Company, The Southern Railway Company, The Central Railroad and Banking Company of Georgia, and The Central of Georgia Railway Company, by Ed. Baxter, their solicitor, and say that in the decree, rendered by said circuit court in the above-entitled cause on the 2nd day of February, 1898, and in the record and proceedings in said cause in said court, there is manifest error, in this, to wit:

I.

That said circuit court erred because it failed to adjudge and decree that the matters of equity alleged in the petition, or bill, filed in the above-entitled cause in said court by The Interstate Commerce Commission, complainant, against the above-named defendants are fully denied in the answer, and are not sustained by the proof, and that such petition, or bill, be dismissed.

II.

That said circuit court erred because it in effect adjudged and decreed that the order made by the Interstate Commerce Commission, on the 30th day of December, A. D. 1892, in the case of the Board of Trade of Chattanooga *vs.* The East Tennessee, Virginia & Georgia Railway Company *et al.*, is a lawful order, and should be enforced; whereas said order is unlawful and void, and should not be enforced.

III.

That said circuit court erred in decreeing that the said defendants, The East Tennessee, Virginia & Georgia Railway Company, The Norfolk & Western Railroad Company, The Norfolk & Western Railway Company, The Old Dominion Steamship Company, The Western & Atlantic Railroad Company, The Central Railroad and Banking Company of Georgia, and The Louisville & Nashville Railroad Company, sued by the name of the Georgia Railroad Company; The Ocean Steamship Company, The Cincinnati, New Orleans & Texas Pacific Railway Company, The Nashville, Chattanooga & St. Louis Railway, The Southern Railway Company, The Central Railroad and Banking Company of Georgia, and The Central of Georgia Railway Company, together with the other defendants in said cause, pay the costs of said cause in said circuit court.

459 IV.

That said circuit court erred in decreeing that said defendants, The East Tennessee, Virginia & Georgia Railway Company, The Norfolk & Western Railroad Company; The Norfolk & Western Railway Company; The Old Dominion Steamship Company; The Western & Atlantic Railroad Company; The Central Railroad & Banking Company of Georgia, and The Louisville & Nashville Railroad Company; sued by the name of The Georgia Railroad Company; The Ocean Steamship Company; The Cincinnati, New Orleans & Texas Pacific Railway Company; The Nashville, Chattanooga & St. Louis Railway; The Southern Railway Company; The Central Railroad and Banking Company of Georgia; and The Central of Georgia Railway Company, or such of them as are or may be engaged in the transportation of property from New York and other Atlantic seaboard points to Chattanooga or through Chattanooga to Nashville in the State of Tennessee, be required to cease and desist from charging or receiving any greater compensation in the aggregate for the transportation of like kind of property from

New York, Boston, Philadelphia, Baltimore or other Atlantic seaboard cities for the shorter distance to Chattanooga, than for the longer distance over the same line in the same direction to Nashville.

V.

That said circuit court erred because it, in effect, decided that the rates charged by the above-named defendants for the transportation of property from New York, Boston, Philadelphia, Baltimore and other Atlantic seaboard cities to Chattanooga are unjust and unreasonable.

VI.

That said circuit court erred, because it, in effect, decided that the transportation of property by the above-named defendants from New York, Boston, Philadelphia, Baltimore or other Atlantic seaboard cities to Chattanooga, Tennessee, is a like and contemporaneous service, under substantially similar circumstances and conditions with the transportation of property by the above-named defendants from New York, Boston, Philadelphia, Baltimore or other Atlantic seaboard cities to Nashville, Tennessee.

VII.

That said circuit court erred, because it, in effect, decided
460 that as the above-named defendants make a greater charge in the aggregate for the transportation of property carried by them from New York, Boston, Philadelphia, Baltimore or other Atlantic seaboard cities to Chattanooga, Tennessee, than they make on such property carried by them from New York, Boston, Philadelphia, Baltimore or other Atlantic seaboard cities to Nashville, Tennessee, they thereby give to Nashville, Tennessee, and its traffic, an undue or unreasonable preference or advantage, and subject Chattanooga, Tennessee, and its traffic to an undue or unreasonable prejudice or disadvantage.

VIII.

That said circuit court erred, because it, in effect, decided that the transportation by the above-named defendants of property carried by them from New York, Boston, Philadelphia, Baltimore or other Atlantic seaboard cities to Chattanooga, Tennessee, is transportation conducted under substantially similar circumstances and conditions for a shorter than for a longer distance over the same line in the same direction, the shorter being included within the longer distance, as compared with the transportation by the above-named defendants or property carried by them from New York, Boston, Philadelphia, Baltimore or other Atlantic seaboard cities to Nashville, Tennessee.

IX.

That said circuit court erred, because it, in effect, decided that the Interstate Commerce Commission has the power to fix the rates of transportation to be charged by the above-named defendants for

property carried by them from New York, Boston, Philadelphia, Baltimore or other Atlantic seaboard cities to Chattanooga, Tennessee, and to Nashville, Tennessee, respectively.

X.

That said circuit court erred because it, in effect, decided that it, said circuit court, has the power to fix the rates of transportation to be charged by the above-named defendants, for property carried by them from New York, Boston, Philadelphia, Baltimore or other Atlantic seaboard cities to Chattanooga, Tennessee, and to Nashville, Tennessee.

Wherefore the above-named defendants, The East Tennessee, Virginia & Georgia Railway Company; The Norfolk & Western
461 Railroad Company; The Norfolk & Western Railway Company; The Old Dominion Steamship Company; The Western & Atlantic Railroad Company; The Central Railroad and Banking Company of Georgia, and The Louisville & Nashville Railroad Company, sued by the name of The Georgia Railroad Company; The Ocean Steamship Company; The Cincinnati, New Orleans & Texas Pacific Railway Company; The Nashville, Chattanooga & St. Louis Railway; The Southern Railway Company; The Central Railroad and Banking Company of Georgia; and The Central of Georgia Railway Company, pray that said decree of said circuit court of the United States, for the eastern district of Tennessee, at Chattanooga, Tennessee, rendered in the above-entitled cause on the 2nd day of February, 1898, be reversed, and that said circuit court be ordered to enter a decree, dismissing the petition or bill filed in the above-entitled cause, in said court, by The Interstate Commerce Commission, complainant, against the above-named defendants.

ED. BAXTER,
Solicitor for Above-named Defendants and Appellants.

Chattanooga, Tenn., Feb. 2, 1898.

And on the same day, to wit, the 2nd day of Feb'y, A. D. 1898, a certain appeal bond was filed in the clerk's office of said court, which said appeal bond is clothed in the words and figures following, to wit:

Appeal Bond.

(Endorsed:) Filed Feb'y 2, 1898. Henry O. Ewing, Cl'k.

In the Circuit Court of the United States for the Eastern District of Tennessee, at Chattanooga, Tennessee, October Term, 1897.

THE INTERSTATE COMMERCE COMMISSION, Appellee, *vs.* THE EAST TENNESSEE, VIRGINIA & GEORGIA RAILway Company; The Norfolk & Western Railroad Company; The Norfolk & Western Railway Company; The Old Dominion Steamship Company; The Western & Atlantic Railroad Company; The Central Railroad and Banking Company of Georgia, and The Louisville & Nashville Railroad Company, Sued by the name of The Georgia Railroad Company; The Ocean Steamship Company; The Cincinnati, New Orleans & Texas Pacific Railway Company; The Nashville, Chattanooga & St. Louis Railway; The Southern Railway Company; The Central Railroad and Banking Company of Georgia, and The Central of Georgia Railway Company, Appellants.	In Equity. No. 384.

462

Know all men by these presents, that we, The East Tennessee, Virginia & Georgia Railway Company; The Norfolk & Western Railroad Company; The Norfolk & Western Railway Company; The Old Dominion Steamship Company; The Western & Atlantic Railroad Company; The Central Railroad & Banking Company of Georgia, and The Louisville & Nashville Railroad Company, sued by the name of The Georgia Railroad Company; The Ocean Steamship Company; The Cincinnati, New Orleans & Texas Pacific Railway Company; The Nashville, Chattanooga & St. Louis Railway; The Southern Railway Company; The Central Railroad and Banking Company of Georgia; and The Central of Georgia Railway Company, as principals, and Foster V. Brown and J. H. Peebles of the city of Chattanooga, and State of Tennessee, surety-, are held and firmly bound unto the above-named Interstate Commerce Commission in the sum of one thousand dollars, to be paid to the said Interstate Commerce Commission, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our successors, heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the 2nd day of February, in the year of our Lord, eighteen hundred and ninety-eight.

Whereas, the above-named The East Tennessee, Virginia & Georgia Railway Company; The Norfolk & Western Railroad Company; The Norfolk & Western Railway Company; The Old Dominion Steamship Company; The Western & Atlantic

Railroad Company; The Central Railroad & Banking
463 Company of Georgia; The Louisville and Nashville Railroad Company, sued by the name of The Georgia Railroad Company; The Ocean Steamship Company; The Cincinnati, New Orleans & Texas Pacific Railway Company; The Nashville, Chattanooga & St. Louis Railway; The Southern Railway Company; The Central Railroad and Banking Company of Georgia; and The Central of Georgia Railway Company have prosecuted an appeal to the United States circuit court of appeals, for the sixth circuit, to reverse the decree rendered in the above-entitled suit by the circuit court of the United States for the eastern district of Tennessee at Chattanooga on the 2nd day of February, 1898:

Now, therefore, the condition of this obligation is such, that if the above-named The East Tennessee, Virginia & Georgia Railway Company; The Norfolk & Western Railway Company; The Norfolk & Western Railroad Company; The Old Dominion Steamship Company; The Western & Atlantic Railroad Company; The Central Railroad & Banking Company of Georgia, and The Louisville and Nashville Railroad Company, sued by the name of The Georgia Railroad Company; The Ocean Steamship Company; The Cincinnati, New Orleans & Texas Pacific Railway Company; The Nashville, Chattanooga & St. Louis railway; The Southern Railway Company; The Central Railroad & Banking Company of Georgia, and The Central of Georgia Railway Company, shall prosecute said appeal to effect, and answer all damages and costs, if they fail to make said appeal good, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

THE EAST TENNESSEE, VIRGINIA & GEORGIA RAILWAY, [SEAL.]
By ED. BAXTER, *Its Solicitor.*
THE NORFOLK & WESTERN RAILROAD COMPANY, [SEAL.]
By ED. BAXTER, *Its Solicitor.*
THE NORFOLK & WESTERN RAILWAY COMPANY, [SEAL.]
By ED. BAXTER, *Its Solicitor.*
THE OLD DOMINION STEAMSHIP COMPANY, [SEAL.]
By ED. BAXTER, *Its Solicitor.*
THE WESTERN & ATLANTIC RAILROAD COMPANY, [SEAL.]
By ED. BAXTER, *Its Solicitor.*
THE CENTRAL RAILROAD & BANKING COMPANY OF GEORGIA, [SEAL.]
By ED. BAXTER, *Its Solicitor.*
464 THE LOUISVILLE & NASHVILLE RAILROAD COMPANY, [SEAL.]
By ED. BAXTER, *Its Solicitor.*
THE OCEAN STEAMSHIP COMPANY, [SEAL.]
By ED. BAXTER, *Its Solicitor.*

THE CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY, [SEAL.]
By ED. BAXTER, *Its Solicitor.*
THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY, [SEAL.]
By ED. BAXTER, *Its Solicitor.*
THE SOUTHERN RAILWAY COMPANY, [SEAL.]
By ED. BAXTER, *Its Solicitor.*
THE CENTRAL OF GEORGIA RAILWAY COMPANY, [SEAL.]
By ED. BAXTER, *Its Solicitor.*
FOSTER V. BROWN, *Surety.* [SEAL.]
JNO. H. PEEBLES. [SEAL.]

Sealed and delivered and taken and acknowledged before me and approved by me, this 2nd day of February, eighteen hundred and ninety-eight.

H. F. SEVERENS,
U. S. Dist. Judge.

And on the same day, to wit, the 2nd day of February, A. D. 1898, an entry was made upon the journal of said court, which said entry is clothed in the words and figures following, to wit:

Journal "F," page 362, Feb. 2, 1898.

In the Circuit Court of the United States for the Eastern District of Tennessee, at Chattanooga, Tennessee, October Term, 1897.

THE INTERSTATE COMMERCE COMMISSION, Complainant,
vs.
THE EAST TENNESSEE, VIRGINIA & GEORGIA Railway Company, The Norfolk & Western Railroad Company, The Norfolk & Western Railway Company, The Old Dominion Steamship Company, The Western & Atlantic Railroad
465 Company, The Central Railroad and Banking Company of Georgia, and The Louisville & Nashville Railroad Company, Sued by the Name of The Georgia Railroad Company; The Ocean Steamship Company, The Cincinnati, New Orleans & Texas Pacific Railway Company, The Nashville, Chattanooga & St. Louis Railway, The Southern Railway Company, The Central Railroad and Banking Company of Georgia, and The Central of Georgia Railway Company, Defendants.
} In Equity. No. 384.

The above-named defendants, The East Tennessee, Virginia & Georgia Railway Company; The Norfolk & Western Railroad Com-

pany; The Norfolk & Western Railway Company; The Old Dominion Steamship Company; The Western & Atlantic Railroad Company; The Central Railroad & Banking Company of Georgia, and The Louisville & Nashville Railroad Company, sued by the name of The Georgia Railroad Company; The Ocean Steamship Company; The Cincinnati, New Orleans & Texas Pacific Railway Company; The Nashville, Chattanooga & St. Louis Railway; The Southern Railway Company; The Central Railroad and Banking Company of Georgia, and The Central of Georgia Railway Company, pray an appeal from the decree rendered by this court in the above-entitled case, on the 2nd day of February, 1898, to the United States circuit court of appeals for the sixth circuit; and said defendants having filed with the clerk of this court, their petition for appeal, together with an assignment of errors, and an appeal bond, which bond has been duly approved, it is ordered, adjudged and decreed by the court, that said appeal be granted and allowed, and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, be sent to the United States circuit court of appeals for the sixth circuit.

The foregoing is hereby approved for entry, Feb. 2nd, 1898.

H. F. SEVERENS,
U. S. Dist. Judge.

466 *Citation on Appeal.*

UNITED STATES OF AMERICA, *ss:*

To the Interstates Commerce Commission, Greeting:

You are hereby cited and admonished to be and appear at the court-room of the United States circuit court of appeals, for the sixth circuit, at Cincinnati, Ohio, on the 3rd day of March, eighteen hundred and ninety-eight, pursuant to an appeal allowed and granted by the circuit court of the United States for the eastern district of Tennessee at Chattanooga in the case of The Interstate Commerce Commission, as appellee, and The East Tennessee, Virginia & Georgia Railway Company; The Norfolk & Western Railroad Company; The Norfolk & Western Railway Company; The Old Dominion Steamship Company; The Western & Atlantic Railroad Company; The Central Railroad and Banking Company of Georgia, and The Louisville & Nashville Railroad Company, sued by the name of The Georgia Railroad Company; The Ocean Steamship Company; The Cincinnati, New Orleans & Texas Pacific Railway Company; The Nashville, Chattanooga & St. Louis Railway; The Southern Railway Company; The Central Railroad and Banking Company of Georgia; and The Central of Georgia Railway Company, as appellants, to show cause, if any there be why the decree of said circuit court of the United States for the eastern district of Tennessee, at Chattanooga, rendered on the 2nd day of February, 1898, should not be corrected and speedy justice should not be done to the parties on that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the

United States, this 2nd day of February, in the year of our Lord eighteen hundred and ninety-eight.

H. F. SEVERENS,
U. S. Dist. Judge.

I acknowledge service of the within citation and waive copy this, the 2d day of February, 1898.

L. A. SHAVER,
Of Counsel for Complainant.

No. 584. Interstate Commerce Commission against E. T., V. & Ga. R'y Co. *et al.* Citation.

467 UNITED STATES OF AMERICA, } ss:
Eastern District of Tennessee, Southern Division, }

I, Henry O. Ewing, clerk of the circuit court of the United States for the district aforesaid, do hereby certify the above and foregoing to be a full, true and correct transcript of the record in the case of The Interstate Commerce Commission *vs.* The East Tennessee, Virginia & Georgia R'y, *et al.*, as the same appears of record and remains on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at office in the city of Chattanooga, Tennessee, this March 1st, 1898.

[SEAL.] HENRY O. EWING, *Clerk.*

468 And afterwards, to wit, on March 9th, 1898, præcipe for appearance was filed in said cause, which is in the words and figures as follows:

United States Circuit Court of Appeals for the Sixth Circuit, October Term, 1897.

EAST TENNESSEE, VIRGINIA & GEORGIA RAILWAY CO. }
vs. } No. 595.
INTERSTATE COMMERCE COMMISSION. }

To the clerk of said court:

Please enter my appearance as counsel for the appellant.

ED. BAXTER.

And afterwards, to wit, on March 10th, 1898, a motion to advance the hearing of said cause was filed, which reads and is as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

THE EAST TENNESSEE, VIRGINIA & GEORGIA RAILWAY Company
vs.
THE INTERSTATE COMMERCE COMMISSION. } No. 595.

Now comes Harlan Clevelan-, attorney of the United States for the southern district of Ohio, and moves the court to advance
469 and set this cause for an early hearing and to fix the time within which briefs shall be filed herein, upon the ground that the questions involved herein are of public importance and an early hearing and disposition of said cause is desireable.

HARLAN CLEVELAND,
U. S. Attorney, S. D. O.

And afterwards, to wit, on April 5th, 1898, an order setting cause for hearing was entered, which is in the words and figures as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

EAST TENNESSEE, VIRGINIA & GEORGIA RAILWAY Co.
vs.
INTERSTATE COMMERCE COMMISSION. } No. 595.

This day this cause came on to be heard upon the motion of the appellee to advance the above-entitled cause and fix the time for the oral argument thereof, and thereupon it was, upon agreement of counsel for said respective parties, ordered that this cause be, and the same is hereby, set for hearing at the May session, 1898, of this term, to wit, for Monday, May 16, 1898.

It is further ordered that the appellant have until Wednesday, April 20, 1898, to file their briefs herein, and that the appellee have until Thursday, May 5th, 1898, to file its brief herein.

470 And afterwards, to wit, on June 1st, 1898, an order of continuance was entered, which is in the words and figures following:

United States Circuit Court of Appeals for the Sixth Circuit.

EAST TENNESSEE, VIRGINIA & GEORGIA Railway Co.
vs.
INTERSTATE COMMERCE COMMISSION. } Appeal from the Circuit Court of the United States for the Eastern District of Tennessee. Before Judges Harlan, Taft, and Lurton.

This cause came on this day for hearing, and is argued for appellant by Mr. Ed. Baxter, and by Mr. L. A. Shaver for appellee, and is continued until tomorrow morning at 9.30 o'clock for further argument.

And afterwards, to wit, on June 2nd, 1898, an entry was made upon the journal of said court, which reads and is as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

EAST TENNESSEE, VIRGINIA & *Tennessee* RAILWAY CO.
vs.
INTERSTATE COMMERCE COMMISSION.

This cause came on for further hearing, and was argued further for the appellee by Mr. L. A. Shaver, and on behalf of the appellant by Mr. W. A. Henderson, and is submitted to the court.

471 And afterwards, to wit, on November 13th, 1899, a decree was rendered in said cause, which reads and is as follows:

Decree.

472 United States Circuit Court of Appeals for the Sixth Circuit.

EAST TENNESSEE, VIRGINIA & GEORGIA RAILWAY CO.
v.
INTERSTATE COMMERCE COMMISSION. } No. 595.

Appeal from the circuit court of the United States for the eastern district of Tennessee.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the eastern district of Tennessee and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, affirmed with costs.

473 And afterwards, to wit, on November 22nd, 1899, a petition for appeal was filed in the words and figures following:

United States Circuit Court of Appeals for the Sixth Circuit, November Term, 1899.

THE EAST TENNESSEE, VIRGINIA & GEORGIA RAILWAY COMPANY, The Norfolk & Western Railroad Company, The Norfolk & Western Railway Company, The Old Dominion Steamship Company, The Western & Atlantic Railroad, The Central Railroad & Banking Company of Georgia, and The Louisville & Nashville Railroad Company, Sued by the Name of The Georgia Railroad Company; The Ocean Steamship Company, The Cincinnati, New Orleans & Texas Pacific Railway Company, The Nashville, Chattanooga & St. Louis Railway, The Southern Railway Company, The Central Railroad & Banking Company of Georgia, and The Central of Georgia Railway Company, Appellants,
vs.
THE INTERSTATE COMMERCE COMMISSION, Appellee.

The above-named appellants, The East Tennessee, Virginia & Georgia Railway Company, The Norfolk & Western Railroad Com-

pany, The Norfolk & Western Railway Company, The Old Dominion Steamship Company, The Western & Atlantic Railroad Company, The Central Railroad & Banking Company of Georgia, and The Louisville & Nashville Railroad Company, sued by the name of The Georgia Railroad Company; The Ocean Steamship Company, The Cincinnati, New Orleans & Texas Pacific Railway Company, The Nashville, Chattanooga & St. Louis Railway, The Southern Railway Company, The Central Railroad & Banking Company of Georgia, and The Central of Georgia Railway Company, con-
474 ceiving themselves aggrieved by the decree entered in this cause on the 13th day of November, 1899, do hereby appeal from said decree to the Supreme Court of the United States and they pray that their said appeal may be allowed, and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sebt to the Supreme Court of the United States.

ED. BAXTER,
Solicitor for Above-named Appellants.

And afterwards, on the same day, to wit, November 22nd, 1899, assignments of error were filed, clothed in the words and figures as follows:

United States Circuit Court of Appeals for the Sixth Circuit, November Term, 1899.

THE EAST TENNESSEE, VIRGINIA & GEORGIA RAILWAY COMPANY, The Norfolk & Western Railroad Company, The Norfolk & Western Railway Company, The Old Dominion Steamship Company, The Western & Atlantic Railroad Company, The Central Railroad & Banking Company of Georgia, and The Louisville & Nashville Railroad Company, Sued by the Name of The Georgia Railroad Company; The Ocean Steamship Company, The Cincinnati, New Orleans & Texas Pacific Railway Company, The Nashville, Chattanooga & St. Louis Railway, The Southern Railway Company, The Central Railroad & Banking Company of Georgia, and The Central of Georgia Railway Company, Appellants,

vs.

THE INTERSTATE COMMERCE COMMISSION, Appellee.

On the 22nd day of November, in the year of our Lord
475 1899, in the city of Cincinnati and State of Ohio, came the appellants, The East Tennessee, Virginia & Georgia Railway Company, The Norfolk & Western Railroad Company, The Norfolk & Western Railway Company, The Old Dominion Steamship Company, The Western & Atlantic Railroad Company, The Central Railroad & Banking Company of Georgia, The Louisville & Nashville Railroad Company, sued by the name of The Georgia Railroad Company; The Ocean Steamship Company, The Cincinnati, New Orleans & Texas Pacific Railway Company, The Nashville, Chattanooga & St. Louis Railway, The Southern Railway Com-

pany, The Central Railroad & Banking Company of Georgia, and The Central of Georgia Railway Company, by Ed. Baxter, their solicitor, and say that in the decree rendered by the said circuit court of appeals in the above-entitled cause on the 13th day of November, 1899, and in the record and proceedings in said cause in said court there is manifest error, in this, to wit:

I.

That said circuit court of appeals erred in affirming the decree rendered in the above-entitled cause on the 2nd day of February, 1898, by the circuit court of the United States for the eastern district of Tennessee, with costs.

II.

That the said circuit court of appeals erred in not reversing the decree rendered in the above-entitled cause on the 2nd day of February, 1898, by the circuit court of the United States for the eastern district of Tennessee.

III.

That said circuit court of appeals erred because it failed to adjudge and decree that the matters of equity alleged in the petition or bill filed in the above-entitled cause in said circuit court of the United States for the eastern district of Tennessee by the appellee,
476 as complainant, against the above-named appellants, as defendants, are fully denied in the answers and are not sustained by the proof, and that such petition or bill be dismissed with costs.

IV.

That said circuit court of appeals erred because it in effect adjudged and decreed that the order made by the Interstate Commerce Commission on the 30th day of December, 1892, in the case of The Board of Trade of Chattanooga *vs.* The East Tennessee, Virginia & Georgia Railway Company *et al.*, is a lawful order and should be enforced, whereas said order is unlawful and void and should not be enforced.

V.

That said circuit court of appeals erred in decreeing that the above-named appellants pay the costs.

VI.

That said circuit court of appeals erred in decreeing in effect that the above-named appellants or such of them as are or may be engaged in the transportation of property from New York and other Atlantic seaboard points to Chattanooga or through Chattanooga to Nashville, in the State of Tennessee, be required to cease and desist from charging or receiving any greater compensation in the aggregate for the transportation of like kind of property from New York, Boston, Philadelphia, Baltimore, or other Atlantic seaboard cities

for the shorter distance to Chattanooga than for the longer distance over the same line, in the same direction, to Nashville.

VII.

That said circuit court of appeals erred in not deciding that the rates charged by the above-named appellants for the transportation of property from New York, Boston, Philadelphia, Baltimore, and other Atlantic seaboard cities to Chattanooga are just and reasonable.

477

VIII.

That said circuit court of appeals erred in not deciding that the transportation of property by the above-named appellants from New York, Boston, Philadelphia, Baltimore, or other Atlantic seaboard cities to Chattanooga, Tennessee, is not a like and contemporaneous service and is not done under substantially similar circumstances and conditions with the transportation of property by the above-named appellants from New York, Boston, Philadelphia, Baltimore, or other Atlantic seaboard cities to Nashville, Tennessee.

IX.

That said circuit court of appeals erred in not deciding that the above-named appellants in making a greater charge in the aggregate for the transportation of property carried by them from New York, Boston, Philadelphia, Baltimore, or other Atlantic seaboard cities to Chattanooga, Tennessee, than they make on such property carried by them from New York, Boston, Philadelphia, Baltimore, or other Atlantic seaboard cities to Nashville, Tennessee, do not thereby give to Nashville, Tennessee, or its traffice an undue or unreasonable preference or advantage, and do not subject Chattanooga, Tennessee, or its traffic to an undue or unreasonable prejudice or disadvantage.

X.

That said circuit court of appeals erred because it in effect decided that the transportation by the above-named appellants of property carried by them from New York, Boston, Philadelphia, Baltimore, or other Atlantic seaboard cities to Chattanooga, Tennessee, is transportation conducted under substantially similar circumstances and conditions for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within

478 the longer distance, as compared with the transportation by the above-named appellants of property carried by them from New York, Boston, Philadelphia, Baltimore, or other Atlantic seaboard cities to Nashville, Tennessee.

XI.

That said circuit court of appeals erred because it in effect decided that the appellee, The Interstate Commerce Commission, has the power to fix the rates of transportation to be charged by the

above-named appellants for property carried by them from New York, Boston, Philadelphia, Baltimore, or other Atlantic seaboard cities to Chattanooga, Tennessee, and to Nashville, Tennessee, respectively.

Wherefore the above-named appellants, The East Tennessee, Virginia & Georgia Railway Company, The Norfolk & Western Railroad Company, The Norfolk & Western Railway Company, The Old Dominion Steamship Company, The Western & Atlantic Railroad Company, The Central Railroad & Banking Company of Georgia, and The Louisville & Nashville Railroad Company, sued by the name of The Georgia Railroad Company; The Ocean Steamship Company, The Cincinnati, New Orleans & Texas Pacific Railway Company, The Nashville, Chattanooga & St. Louis Railway, The Southern Railway Company, The Central Railroad & Banking Company of Georgia, and The Central of Georgia Railway Company, pray that said decree of said United States circuit court of *of* appeals for the sixth circuit, rendered in the above-entitled cause on the 13th day of November, 1899, be reversed, and that said court be ordered to enter a decree reversing the said decree rendered on the 2nd day of February, 1898, in the above-entitled cause by the said circuit court of the United States for the eastern district of Tennessee, and ordering said petition or bill filed by said
479 Interstate Commerce Commission in said circuit court to be dismissed with costs.

ED. BAXTER,
Solicitor for the Above-named Appellants.

And on the same day, to wit, on November 22nd, 1899, an appeal bond was filed, which is in the words and figures as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

THE EAST TENNESSEE, VIRGINIA & GEORGIA RAILway Company, The Norfolk & Western Railroad Company, The Norfolk & Western Railway Company, The Old Dominion Steamship Company, The Western & Atlantic Railroad Company, The Central Railroad & Banking Company of Georgia, and The Louisville & Nashville Railroad Company, Sued by the Name of The Georgia Railroad Company; The Ocean Steamship Company, The Cincinnati, New Orleans & Texas Pacific Railway Company, The Nashville, Chattanooga & St. Louis Railway, The Southern Railway Company, The Central Railroad & Banking Company of Georgia, and The Central of Georgia Railway Company, Appellants,

vs.

THE INTERSTATE COMMERCE COMMISSION, Appellee. } Appeal Bond.

Know all men by these presents that we, The East Tennessee, Virginia & Georgia Railway Company, The Norfolk & Western

Railroad Company, The Norfolk & Western Railway Company, The Old Dominion Steamship Company, The Western & Atlantic Railroad Company, The Central Railroad & Banking Company of Georgia, and The Louisville & Nashville Railroad Company, sued by
480 the name of The Georgia Railroad Company; The Ocean Steamship Company, The Cincinnati, New Orleans & Texas Pacific Railway Company, The Nashville, Chattanooga & St. Louis Railway, The Southern Railway Company, The Central Railroad & Banking Company of Georgia, and The Central of Georgia Railway Company, as principals, and Michael Ryan and Brent Arnold, of the city of Cincinnati, State of Ohio, surety, are held and firmly bound unto the above-named Interstate Commerce Commission in the sum of five thousand dollars, to be paid to the said Interstate Commerce Commission; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our successors, heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 22nd day of November, in the year of our Lord 1899.

Whereas the above-named The East Tennessee, Virginia & Georgia Railway Company, The Norfolk & Western Railroad Company, The Norfolk & Western Railway Company, The Old Dominion Steamship Company, The Western & Atlantic Railroad Company, The Central Railroad & Banking Company of Georgia, and The Louisville & Nashville Railroad Company, sued by the name of The Georgia Railroad Company; The Ocean Steamship Company, The Cincinnati, New Orleans & Texas Pacific Railway Company, The Nashville, Chattanooga & St. Louis Railway, The Southern Railway Company, The Central Railroad & Banking Company of Georgia, and The Central of Georgia Railway Company have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the United States circuit court of appeals for the sixth circuit on the 13th day of November, 1899:

Now, therefore, the condition of this obligation is such that if the above-named The East Tennessee, Virginia & Georgia
481 Railway Company, The Norfolk & Western Railroad Company, The Norfolk & Western Railway Company, The Old Dominion Steamship Company, The Western & Atlantic Railroad Company, The Central Railroad & Banking Company of Georgia, and The Louisville & Nashville Railroad Company, sued by the name of The Georgia Railroad Company; The Ocean Steamship Company, The Cincinnati, New Orleans & Texas Pacific Railway Company, The Nashville, Chattanooga & St. Louis Railway, The Southern Railway Company, The Central Railroad & Banking Company of Georgia, and The Central of Georgia Railway Company shall prosecute said appeal to effect and answer all damages and costs if they fail to make said appeal good, then this obligation

shall be void; otherwise the same shall remain in full force and virtue.

THE EAST TENNESSEE, VIRGINIA & GEORGIA RAILWAY COMPANY, [SEAL.]
By ED BAXTER, *Its Solicitor.*
THE NORFOLK & WESTERN RAILROAD COMPANY, [SEAL.]
By ED BAXTER, *Its Solicitor.*
THE NORFOLK & WESTERN RAILWAY COMPANY, [SEAL.]
By ED BAXTER, *Its Solicitor.*
THE OLD DOMINION STEAMSHIP COMPANY, [SEAL.]
By ED BAXTER, *Its Solicitor.*
THE WESTERN & ATLANTIC RAILROAD COMPANY, [SEAL.]
By ED BAXTER, *Its Solicitor.*
THE CENTRAL RAILROAD & BANKING COMPANY OF GEORGIA, [SEAL.]
By ED BAXTER, *Its Solicitor.*
482 THE LOUISVILLE & NASHVILLE RAILROAD COMPANY, [SEAL.]
By ——— ———, *Its Solicitor.*
THE GEORGIA RAILROAD COMPANY, [SEAL.]
By ED BAXTER, *Its Solicitor.*
THE OCEAN STEAMSHIP COMPANY, [SEAL.]
By ED BAXTER, *Its Solicitor.*
THE CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY COMPANY, [SEAL.]
By ED BAXTER, *Its Solicitor.*
THE NASHVILLE, CHATTANOOGA & ST. LOUIS COMPANY, [SEAL.]
By ED BAXTER, *Its Solicitor.*
THE SOUTHERN RAILWAY COMPANY, [SEAL.]
By ED BAXTER, *Its Solicitor.*
THE CENTRAL RAILROAD & BANKING COMPANY OF GEORGIA, [SEAL.]
By ED BAXTER, *Its Solicitor.*
THE CENTRAL OF GEORGIA RAILWAY COMPANY, [SEAL.]
By ED BAXTER, *Its Solicitor.*
MICHAEL RYAN. [SEAL.]
BRENT ARNOLD. [SEAL.]

Sealed and delivered and taken and acknowledged before me and approved by me this 22nd day of November, 1899.

WM. H. TAFT,
U. S. Circuit Judge.

483 And afterwards, on the same day, to wit, November 22nd, 1899, an order granting appeal was entered, which reads and is as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

THE EAST TENNESSEE, VIRGINIA & GEORGIA RAILWAY COMPANY, The Norfolk & Western Railroad Company, The Norfolk & Western Railway Company, The Old Dominion Steamship Company, The Western & Atlantic Railroad Company, The Central Railroad & Banking Company of Georgia, and The Louisville & Nashville Railroad Company, Sued by the Name of The Georgia Railroad Company; The Ocean Steamship Company, The Cincinnati, New Orleans & Texas Pacific Railway Company, The Nashville, Chattanooga & St. Louis Railway, The Southern Railway Company, and The Central of Georgia Railway Company, Appellants,

vs.

THE INTERSTATE COMMERCE COMMISSION, Appellee.

The above-named appellants, The East Tennessee, Virginia & Georgia Railway Company, The Norfolk & Western Railroad Company, The Norfolk & Western Railway Company, The Old Dominion Steamship Company, The Western & Atlantic Railroad Company, The Central Railroad & Banking Company, and The Louisville & Nashville Railroad Company, sued by the name of The Georgia Railroad Company; The Ocean Steamship Company, The Cincinnati, New Orleans & Texas Pacific Railway Company, The Nashville, Chattanooga & St. Louis Railway, The Southern Railway Company, The Central Railroad & Banking Company of Georgia, and The Central of Georgia Railway Company, pray an appeal from
484 the decree rendered by this court in the above-entitled cause on the 13th day of November, 1899, to the Supreme Court of the United States; and said appellants having filed with the clerk of this court their petition for appeal, together with an assignment of errors and an appeal bond, which bond had been duly approved, it is ordered, adjudged, and decreed by the court that the said appeal be granted and allowed, and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, be sent to the Supreme Court of the United States.

WM. H. TAFT.
Circuit Judge.

Nov. 22, 1899.

And on the same day, to wit, November 22nd, 1899, a citation was issued in said cause, which is in the words and figures as follows:

Citation.

485 Citation on appeal.

UNITED STATES OF AMERICA, *ss:*

To the Interstate Commerce Commission, Greeting:

You are hereby cited and admonished to be and appear at the court-room of the Supreme Court of the United States, at Washington, on the 21st day of December, eighteen hundred and ninety-nine, pursuant to an appeal allowed and granted by the United States circuit court of appeals for the sixth circuit, in the case of The East Tennessee, Virginia & Georgia Railway Company, The Norfolk & Western Railroad Company, The Norfolk & Western Railway Company, The Old Dominion Steamship Company, The Western & Atlantic Railroad Company, The Central Railroad & Banking Company of Georgia, and The Louisville & Nashville Railroad Company, sued by the name of The Georgia Railroad Company; The Ocean Steamship Company, The Cincinnati, New Orleans & Texas Pacific Railway Company, The Nashville, Chattanooga & St. Louis Railway, The Southern Railway Company, The Central Railroad & Banking Company of Georgia, and The Central of Georgia Railway Company, as appellants, and The Interstate Commerce Commission, as appellee, to show cause, if any there be, why the decree of said court of appeals rendered November 13th, 1899, should not be corrected and speedy justice should not be done to the parties on that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 22nd day of November, in the year of our Lord eighteen hundred and ninety-nine.

WM. H. TAFT,
Circuit Judge.

486 This citation may be served by the marshal of the district where the appellee or its solicitor of record in the above cause may be found.

WM. H. TAFT,
Circuit Judge.

I hereby accept service of the foregoing citation this 24th day of November, 1899.

L. A. SHAVER,
Solicitor for Interstate Commerce Commission, Appellee.

487 And afterwards, to wit, on November 25, 1899, the following printed opinion was filed in this court; which reads as follows:

United States Circuit Court of Appeals, Sixth Circuit.

EAST TENNESSEE, VIRGINIA & GEORGIA Railway Company *et al.*, Appellants, *v.* INTERSTATE COMMERCE COMMISSION, Appellee.	No. 595. Appeal from the Circuit Court of the United States for the Eastern District of Tennessee.

Submitted June 2, 1898; decided November 13, 1899.

Before Harlan, circuit justice, and Taft and Lurton, circuit judges.

This is an appeal from a decree of the circuit court for the eastern district of Tennessee (Judge Severens presiding), affirming and enforcing an order of the Interstate Commerce Commission. The cause had its beginning in a complaint of the Board of Trade of Chattanooga, filed with the commission, against a large number of railway and steamship companies engaged in the continuous transportation of merchandise from New York, Boston, Philadelphia and Baltimore to Chattanooga, and to Nashville and Memphis through Chattanooga.

The complaint charged that the defendant companies were injuring the business interests of Chattanooga, which the complainant Board of Trade was incorporated to represent and protect: (1), By charging freight rates from the eastern seaboard points to Chattanooga which were unjust and unreasonably high of themselves, and were thus in violation of the first section of the interstate-commerce act; (2), by charging rates to Chattanooga which were higher than those to Nashville and Memphis and discriminated unduly and unjustly in favor of Nashville and Memphis and against Chattanooga, in violation of the third section of the interstate-
488 commerce act; and, (3), by charging greater compensation for the transportation of like kinds of property, under substantially similar circumstances and conditions, for the shorter distance from the eastern seaboard points to Chattanooga than for the longer distance to Nashville and Memphis, over the same lines, in the same direction, the shorter being included within the longer distance, in violation of the fourth section of the interstate-commerce act. The companies named in the complaint answered, denying that the Chattanooga rates were unreasonable in themselves, denying that they constituted an undue and unjust discrimination against Chattanooga, and denying that the transportation to Nashville and Memphis was under circumstances and conditions similar to those of the Chattanooga traffic, such as to bring the admittedly greater charge to Chattanooga within the fourth section of the interstate-commerce act. The commission heard evidence upon the issues thus raised.

The contention of the defendant companies, foreshadowed in their answers and more fully developed in the evidence and argument, was that competition at Nashville and Memphis with other steamship and railway lines was so great that the conditions of transportation to the more distant cities were entirely different from those

governing the Chattanooga business. Upon this issue, the commission found that the all-water competition by steamer from New York and the other points to New Orleans and thence by steamboat on the Mississippi river to Memphis was actual and continuous and so lowered the possible rates at which the defendant lines could secure any business to that city as to cause the alleged dissimilarity of conditions. The commission therefore held that the complaint as to Memphis rates had not been sustained. As to Nashville the commission found, first, that the alleged water competition from Ohio River points by the Cumberland river to Nashville had no practical effect upon the through rates from New York and the other eastern cities to Nashville; and, second, that the defendant companies transporting merchandise through Chattanooga to Nashville did encounter at Nashville a competition on through eastern business by the East and West trunk lines north of the Ohio river to Cincinnati, and thence by the Louisville & Nashville railroad to Nashville, and that this competition was not subject to the control of the defendant lines. But the commission held that as the East and West trunk lines and the Louisville & Nashville Railroad Company were all subject to the interstate-commerce law, competition maintained by them
489 did not constitute such a dissimilarity of conditions as to take the case out of the fourth section of the act, and that the only remedy of the defendant companies was to apply to the commission for relief, under the proviso of the fourth section, by which the commission upon proper application is empowered to authorize carriers, in special cases, to charge less rates for the longer than for the shorter distance. Accordingly, the commission found that the defendant carriers had violated the fourth section of the act, and made an order requiring the defendant carriers "to cease and desist from charging or receiving any greater compensation in the aggregate for the transportation of like kind of property from New York, Boston, Philadelphia, Baltimore or other Atlantic seaboard cities for the shorter distance to Chattanooga, than for the longer distance, over the same line, in the same direction to Nashville." The order was entered December 30, 1892, but its operation was suspended until February 1, 1893, to enable the defendants to apply to the commission for special authority under the proviso of the fourth section to charge the less rate for the longer distance to Nashville.

The commission did not definitely decide that the rates to Chattanooga were unreasonable in and of themselves, and they did not decide whether the competition at Nashville was of such a character that if application had been made to them they would have made it a special case and authorized the less charge for the longer distance, though there are sentences in the opinion of Commissioner Knapp from which it is to be inferred that the commission were inclined to think that the rates to Chattanooga were unreasonably high, in violation of the first section, and that the competition at Nashville would not justify making the case an exception to the general operation of the fourth section. The carriers failed to

apply to the commission for relief as suggested in the order or to comply with the order. Thereupon, on March 24, 1893, the Interstate Commerce Commission filed the petition in equity against the defaulting carriers upon which the decree appealed from is founded. The petition set out by averments and exhibits the proceedings before it, its findings of fact, its conclusions of law, its order thereon and the refusal of the defendants to obey, and concluded with a prayer for process, hearing and enforcement of the order by injunction.

Because of the disqualification of Judge Clark, who had been of counsel, and also because of the pendency of cases in the
490 supreme court, the decision of which it was thought, by counsel for both parties, would be controlling, the cause did not come on for hearing until December, 1897. Judge Severens decided the case in February, 1898. He held that the commission erred in its view that the defendant carriers were not entitled to rely upon competition of other carriers subject to the interstate-commerce law as a condition rendering the fourth section of the act (the long and short haul clause, so called) inoperative without making special application to the commission for relief from its provisions, and thus did not concur in the sole ground upon which the commission expressly based its order. Proceeding to review the whole body of the evidence, however, he found that the competition at Nashville did not render the conditions and circumstances under which defendant carriers conducted transportation thither, so unlike those existing at Chattanooga as to take the case out of the long and short haul clause, and that, even if the contention of counsel for the carriers that any real dissimilarity, however slight, in conditions of transportation took the case out of the fourth section could be sustained, the discrimination against Chattanooga in the existing rates was so great as to be undue and unjust within the third section of the act. He therefore concluded that the order of the commission was a proper one on other grounds than that upon which it was based, and entered a decree enjoining the carriers in accordance with its terms. He intimated in his opinion that there was sufficient evidence to sustain a finding that the Chattanooga rates were unreasonably high in and of themselves, but he deemed it sufficient merely to enforce the order of the commission as drawn.

The evidence shows that merchandise consigned from New York and other eastern seaboard points (and for the purposes of this case it will hereafter be sufficient to instance the typical case of New York) to Nashville is shipped by a great many different lines, but they are of two classes. One class is made up of East and West trunk lines (so called) lying north of the Ohio river to Cincinnati, and of the Louisville & Nashville railroad to Nashville. The other is made up of a line, either all rail or by water, to a point in southern territory, *i. e.*, in Virginia or further south, near the seaboard, and thence by the southern lines to Chattanooga, and thence by the Nashville, Chattanooga & St. Louis railroad to Nashville. The business of the East and West trunk lines north of the Ohio

river is so great that the rates of freight in force on them are generally much lower (perhaps 33⅓ per cent.) than those in force
491 on the southern lines, which embrace, generally, all lines in States south of the Ohio and east of the Mississippi.

The Louisville & Nashville Railway Company, though a southern line, has put in force from Cincinnati to Nashville, a distance of 295 miles, the trunk-line rates, so that freight rates on merchandise coming to Nashville, by way of Cincinnati, are substantially less than they would be were the usual southern rates of freight charged from Cincinnati to Nashville. Of the southern lines from New York to Nashville, the chief ones are the ocean lines, either to Norfolk, to Charleston, to Savannah and to Brunswick, and thence by rail through Chattanooga to Nashville, or the all-rail lines to Hagerstown, Maryland, and Alexandria, Maryland, and thence by the Southern railway through Chattanooga to Nashville. Eighty per cent. of these all-rail lines are in southern territory, and all the railroads connecting with the southern steamship lines are also in southern territory. If southern rates on Nashville business were charged on that part of the through lines lying in southern territory, the total freight rate to Nashville would be much higher than that charged via the trunk lines to Cincinnati, and via the Louisville & Nashville road to the same point. Therefore the southern lines reduce their charges to such a figure that the total rate becomes the same at Nashville by the southern lines through Chattanooga as by the Louisville & Nashville road from Cincinnati and New York. As a result more than fifty per cent. of the through eastern business to Nashville is carried over the southern lines. The southern lines, however, maintain the southern rates to Chattanooga.

Chattanooga is 330 miles from Cincinnati, with which it is connected by the Cincinnati Southern railway, under lease to the Cincinnati, New Orleans & Texas Pacific Railway Company. The latter company does not charge East and West trunk-line rates on through business from New York to Chattanooga, but fixes its rates according to the southern tariff, though they are less than local rates, and in this way Chattanooga rates, from the East through Cincinnati, are maintained on a southern basis. The rates in the South at Chattanooga and elsewhere are fixed or agreed upon by the southern lines through an association known at different times by different names, at one time as the Southern Railway and Steamship Association, at another as the Southern States Freight Association, and now the Southeastern Freight Association. The association has pursued the policy of grouping towns for the same through rate from the
492 eastern seaboard; Chattanooga is for this purpose grouped with many cities to the South. As to this the commission made the following finding:

As appears from tariffs on file with the commission, the following cities and towns, among others, are grouped with Chattanooga, and take the same rail and water rates on classified traffic, to wit: Dalton, Rome, Atlanta, Americus, Athens, Columbus, Fort Gaines, and Griffin, in the State of Georgia; Huntsville, Decatur, Sheffield, Tus-

cumbia, Florence, Gadsden, Oxford, Talladega, Anniston, Birmingham, Opelika, Montgomery, Selma, and Eufaula, in the State of Alabama; and Enterprise and Meridian, in the State of Mississippi. Of these, Dalton, Rome, Atlanta, Americus, Athens, Columbus, Griffin, Anniston, Gadsden, Oxford, Opelika, and Eufaula have higher all-rail class rates than Chattanooga—their all-rail rates on the six numbered classes being as follows:

1	2	3	4	5	6
122	104	91	77	63	51

The rates to Chattanooga and the above-named common points, both rail and water and all-rail, are established by the Southern Railway and Steamship Association, of which the defendant lines herein are members, and all traffic to those points is governed by the classification of that association.

The grouping is illustrated by the following sketch taken from the brief of counsel for the carriers:

(Here follows diagram marked p. 492.)

493 With this explanation of the way in which the differing rates have come to be fixed, it is proper to make a definite statement of exactly what the differing rates are and their effect. For transportation and rate-fixing, merchandise is classified. There are six classes. The southern classifications differ somewhat from the trunk-line or official classification, but the differences are not great enough to be material in this discussion. The commission found as follows:

The following are the through rates from New York and Boston to Chattanooga, Nashville and Memphis, respectively:

Classes	1	2	3	4	5	6
To Chattanooga	114	98	86	73	60	49
To Memphis, 310 miles farther	100	85	65	45	38	35
To Nashville, 151 miles farther	91	78	60	42	36	31

It thus appears that the rates from New York and Boston are less to Nashville than to Chattanooga, on the six classes respectively, by 23 cents, 20 cents, 26 cents, 31 cents, 24 cents and 18 cents; and less to Memphis than to Chattanooga by 14 cents, 13 cents, 21 cents, 28 cents, 22 cents, and 14 cents. These differences prevail in favor of Nashville and Memphis on all goods transported to those cities from eastern seaboard points through Chattanooga—the distance to Nashville being 151 miles, and to Memphis 310 miles, further than to Chattanooga.

The following comparison shows the difference between the local rate from Cincinnati to Nashville and the amounts added to the trunk-line rate to the former place to make the through rate to the latter from New York:

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	1	2	3	4	5	6
Local rate, Cincinnati to Nashville.. ..	53	48	39	31	25	25
	1	2	3	4	5	6
Additions to trunk-line rate to Cincinnati.	26	21	16	12	10	9

A similar comparison between the local rate from Cincinnati to Chattanooga and the amounts added to the trunk-line rates to Cincinnati to make the through rate from New York to Chattanooga is shown in the following table:

	1	2	3	4	5	6
Local rates Cincinnati to Chattanooga...	76	65	57	47	40	30
	1	2	3	4	5	6
Additions to trunk-line rates to Cincinnati.	49	41	42	43	34	27

494 The proportion of the Nashville through rate charged on a ton of first-class goods from Cincinnati to Nashville via the Louisville & Nashville railroad, a distance of 295 miles, is $5.20, while the proportion of the Chattanooga through rate charged from Cincinnati to Chattanooga via the Cincinnati Southern railway, a distance of 335 miles (only 40 miles further), is $9.80.

The distances by various routes from New York to Nashville and Chattanooga are shown below:

	Miles.
New York to Cincinnati	757
Cincinnati to Nashville	295
	1,052
New York to Cincinnati	757
Cincinnati to Chattanooga	335
	1,092
Via southern lines, all rail:	
New York to Bristol	659
Bristol to Chattanooga	242
	901
Chattanooga to Nashville	152
	1,053
Distances from southern ports to Chattanooga:	
Norfolk to Chattanooga	650
Charleston to Chattanooga	448
Savannah to Chattanooga	435

The city of Chattanooga is in southeastern Tennessee on the river bearing the same name as the State. During the last ten years, especially, its growth has been extremely rapid, and it has become

a manufacturing and commercial point of considerable importance. It competes for the trade of the surrounding country largely in the same territory as Nashville. By reason of the disparity in charges on shipments from the East in favor of Nashville, Chattanooga is placed at serious disadvantage in this competition and its business materially lessened. The tendency of existing rates to these rival towns is to limit the area in which eastern merchandise can be profitably distributed from Chattanooga, and to impede the growth and prosperity of that city, which would naturally result from the development of its wholesale trade.

Under the tariffs now in force goods may be carried from the East through Chattanooga to Nashville and back through Chatta-
495 nooga to points south and east and there sold at lower prices than Chattanooga merchants can sell for; and this appears to have actually occurred in many instances. On a car-load of first-class freight, 40,000 pounds, the charges to Chattanooga, at $1.14 per hundred, amount to $456.00; while to Nashville, at 91 cents, the charges are only $364.00, making a difference of $92.00 in favor of Nashville, the longer haul by 151 miles. On fourth-class freight the advantage in favor of Nashville is $124.00 per car, and on sixth-class, $72.00.

Only two railroads enter Nashville. These are the Louisville & Nashville railroad, from the North and South, and the Nashville, Chattanooga & St. Louis railway, from the East and West.

The railroads entering the city of Chattanooga are:

1. The Nashville, Chattanooga & St. Louis railway, which runs from Chattanooga to Nashville and St. Louis.

2. The Memphis & Charleston road, which runs from Chattanooga to Memphis, where it connects with the Mississippi river and forms a line thence via New Orleans.

3. The Alabama Great Southern road, which runs from Chattanooga to Birmingham, Alabama, and Meridian, Mississippi, connecting with a road entering New Orleans.

4. The Chattanooga Southern railway, from Chattanooga to Gadsden, where it makes several connections.

5. The Chattanooga, Rome & Columbus road, which runs from Chattanooga to Rome, where it connects with various rail lines running through Atlanta to the South Atlantic ports and on to Carrollton, where it connects with the Central Railroad of Georgia system.

6. The Southern railway (south of Chattanooga), which runs from Chattanooga via Rome to Atlanta and there connects with the numerous lines, either all-rail or rail and water, via the South Atlantic ports, and the Southern railway (east of Chattanooga) which runs from Chattanooga via Knoxville to Bristol, and thence forms lines, all-rail, through Hagerstown or Alexandria, or rail and water via Norfolk.

7. The Western and Atlantic railroad, now under lease to the Nashville, Chattanooga & St. Louis Railway Company, which runs from Chattanooga to Atlanta direct.

8. The Cincinnati, New Orleans & Texas Pacific railway, which runs from Chattanooga to Cincinnati.

The seaboard traffic which is carried to Nashville through Chattanooga reaches the latter place by several different routes.
496 The most important of these appears to be the East Tennessee, Virginia & Georgia railway (now the Southern railway), with its eastern connections by rail and water. The water portion of this route is by the vessels of the Old Dominion Steamship Company from New York to Norfolk, where they connect with the Norfolk & Western railroad, which extends to Bristol, Tennessee, the eastern terminus of the East Tennessee, Virginia & Georgia; the rail portion of this route consists of the Pennsylvania system, and possibly other lines, reaching Roanoke, Virginia, on the main line of the Norfolk and Western, by way of the Shenandoah Valley. All traffic over this route passes through Knoxville, Tennessee, the rates to which point are about the same as to Memphis. Another route is by the Clyde Steamship Company to Charleston, connecting at that port with rail lines running through Augusta and Atlanta. A third route is by the Ocean Steamship Company to Savannah, and thence by rail through Macon and Atlanta. A fourth route is by steamer to Brunswick, and thence by Southern railway to Chattanooga. There is no testimony in the case indicating the relative portion of Nashville traffic via Chattanooga which passes by either of these routes, but the commission found that the greater portion of it went by the all-rail route via Alexandria, Virginia.

The Louisville & Nashville Railroad Company has not been a member of the associations of lines fixing southern rates. It owns, however, more than one-half the stock of the Nashville, Chattanooga & St. Louis Railroad Company, which always has been a member of these associations, and it jointly operates the railroad of the Georgia Central and Banking Company, which is also a member of the association. The Georgia Central and Banking Company owns all the stock of the Ocean Steamship Company which has also been a member of the associations. The Nashville, Chattanooga & St. Louis Railroad Company is the only railroad connecting Nashville and Chattanooga. It has under lease the Western and Atlantic railroad, running from Chattanooga to Atlanta. The railroad of the Georgia Central Railroad and Banking Company under the control of the Louisville & Nashville Railroad Company runs from Atlanta to Savannah. And the steamers of the Ocean Steamship Company run from Savannah to New York and Boston. The officers of the Nashville, Chattanooga & St. Louis Railroad Company, it is stipulated, would testify that the company conducts an independent business and competes with the Louisville & Nashville Company.

The Cumberland river, from Paducah, Ky., to Nashville,
497 is open for navigation nine months in the year. The only steamboats running on it are three or four in number, and are capable of carrying not more than three hundred tons of merchandise each. All goods shipped from Cincinnati to Nashville by river, a distance of 617 miles, are transhipped at Paducah, and this

is also true of goods shipped by the same route from Louisville and Evansville. A week is consumed in a round trip from Cincinnati to Nashville by steamboat. It is a two days' trip from Paducah to Nashville. The amount of merchandise carried to Nashville by the Cumberland river from Ohio River points, as compared with that carried by the railroad, is very small, and for twenty years no merchandise shipped from New York by the trunk lines to Nashville has been carried from Ohio River points by the Cumberland river, though rates of freight from those points to Nashville by river are certainly 20 to 25 per cent. less than the rates by rail on through business, and from 40 to 50 per cent. less than the local railway rates for the same distance.

The defendant railroad companies introduced evidence of the traffic managers upon the question of the reasonableness of the existing rates to Nashville and Chattanooga. The uniform evidence was that the Nashville rates were not unreasonably low, and the Chattanooga rates were not unreasonably high. The Nashville rates were said to be remunerative in the sense that they produced a profit over and above the cost of transportation, and the Chattanooga rates were said to be not unreasonably high, because business was done under them and they were not prohibitory; and, further, because on such rates Chattanooga merchants were able to compete with merchants of the cities and towns south of them with which Chattanooga was grouped. No evidence was introduced to show the value of the property necessarily engaged in the business of transportation on any one line, and there was nothing to show that the rates to Nashville did not pay a profit over and above cost of transportation sufficient to meet fixed charges and produce a dividend. Certain of the traffic experts testified that the motive of the Louisville & Nashville Railroad Company in lowering the rates to Nashville was to enable the Nashville merchants to compete with Louisville and Cincinnati merchants in the territory lying between Nashville and the Ohio river, and the same reason is given in the pleadings of some of the defendants and in the briefs of counsel.

498 TAFT, circuit judge, delivered the opinion of the court:

The defendant carriers transport merchandise from New York to Nashville through Chattanooga at rates ranging from 25 to 60 per cent. less than those charged by the same carriers for transporting merchandise from New York to Chattanooga, over the same tracks and in the same trains, although the distance to Chattanooga is 151 miles less than that to Nashville. If the carriage to the two places is under similar circumstances and conditions, then the defendants have violated the fourth section of the interstate-commerce act, and the order of the commission and the judge at the circuit should be sustained. It is contended on behalf of the defendants that the circumstances and conditions of their Nashville business are not similar to those of their Chattanooga business, in that at Nashville they encounter competition which they must meet by lowering their rates in order to secure any business at all, while at Chattanooga

such competition does not exist. This competition is said to be of two kinds:

First. The potential but not actual competition afforded by the situation of Nashville on the Cumberland river, by which it may be reached nine months in the year by steamboat from Evansville and Cincinnati. This gives Nashville water communication with points on the East and West trunk lines whose rates are 33⅓ per cent. less than the southern rates, and thus, it is said, makes it practically a trunk-line point. The evidence does not sustain the claim that in respect to through rates from New York to Nashville via Ohio River points the river competition has any effect whatever. The witnesses for the defendants admit that no through freight from New York to Nashville is ever carried by the Ohio and Cumberland rivers, and this although the rates by river are from 20 to 25 per cent. less than the proportion of the through New York rate to Nashville, collected by the Louisville & Nashville Railroad Company for carriage from Cincinnati to Nashville. But it is said that if the rate is increased to Nashville so as to make it the same as that to Chattanooga, then the river lines will become formidable competitors of the Louisville & Nashville Railroad Company in the through traffic; and freight experts have been produced by the defendants who vaguely express the opinion that to increase the additions made to the trunk-line rates from New York to Cincinnati by the Louisville & Nashville Railroad Company, for its part of the through carriage to Nashville, would induce river competition on this traffic. There has been
499 presented to us an able argument to show the powerful effect of potential water competition upon railway rates in cases where comparatively a small percentage of the freight is actually carried by water. The effect of the Erie canal upon grain rates of freight is cited as a significant illustration. We fully concede much of what is contended on this head, but we find it to have little or no application to the case in hand. It appears by the undisputed evidence that the rates of the Louisville & Nashville railroad from Cincinnati, Louisville and Evansville have practically destroyed not only the New York through business by river, but the local river business from those points to Nashville. The total amount of traffic on the Cumberland river to Nashville is so insignificant, as compared with the local traffic to the same place, that it is not worthy of notice. Now, the local railway rates to Nashville from Ohio River points are about 50 per cent. higher than the through rates on New York shipments between the same points. To make the through New York rate to Nashville the same as that to Chattanooga, the Louisville & Nashville Company will not have to charge as much for its part of the carriage as its local rates. If the local rates have reduced river transportation to a minimum it is clear that any increase on through rates, under which they would still be less than local rates, cannot affect river competition at all. In other words, the margin of possible increase in the through rates, without affecting river competition, includes all the increase in rates required to comply with the order appealed from, even if the carriers elect to bring about the equality enjoined in the order by increasing the Nashville rate

to the Chattanooga rate. We may, therefore, eliminate Cumberland River competition as a factor in reaching our conclusion.

The next question for our consideration is whether the competition of the trunk lines to Cincinnati, and of the Louisville & Nashville railroad to Nashville, makes the conditions of defendants' traffic at that place different from those at Chattanooga. It is settled in the case of Interstate Commerce Comm. *v.* Alabama Midland Railway, 168 U. S., 144, 164, 167, that competition is one of the most obvious and effective circumstances that make the conditions under which a long and short haul is performed substantially dissimilar; that the mere fact of competition, however, no matter what its extent or character, does not necessarily relieve the carrier from the restraints of the third and fourth sections, but only that these sections are not so stringent and imperative as to exclude consideration of competition in determining dissimilarity of conditions, and that competition may in some cases be such as, having due regard to the interests of the public and the carrier, ought justly to have effect upon the rates.

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It is then the duty of the commission and the reviewing courts in such cases to consider not only the extent, but the character of the competition relied on as a justification for discrimination against the nearer point. It must, therefore, be relevant to ask why such competition is not also present at the nearer point. If the answer to the question is found in the absence at the nearer point of competing railway lines, of water competition and of other circumstances naturally creating competition, then the farther point may be reasonably held to be merely enjoying in its lower rates its normal advantages which may and do justly overcome the mere disadvantage of the greater distance of the haul. But when we find that the nearer point has not only the advantage of less haul, but also more railway lines in actual competition, and that there are no other circumstances of substantial advantage in favor of the more distant point, we have a case which the fourth section of the interstate-commerce law was passed to meet. It is argued that the fact of competitive lower rates at the more distant point speaks for itself, and that no amount of argument can demonstrate a similarity of condition in the face of such a rate. This is only one of many arguments advanced on behalf of appellants, which, reduced to their last analysis, involve as a major premise, that the existence of a rate and movement of business under it are a complete justification of it and foreclose judicial investigation. Such an assumption renders the interstate-commerce law nugatory and useless. There are other causes than normal competition that produce discriminatory rates. The interstate-commerce law, it is conceded, was intended to encourage normal competition. It forbids pooling for the very purpose of allowing competition to have effect. But it is not in accord with its spirit or letter to recognize, as a condition justifying discrimination against one locality, competition at a more distant locality when competition at the nearer point is stifled or reduced, not by normal restrictions, but by agreement between those who otherwise would be competing carriers. The difference

in conditions thus produced is effected by a restraint upon trade and commerce, which is not only violative of the common law, but of the so-called Federal anti-trust act. United States *v.*
501 Trans-Missouri Freight Association, 166 U. S., 290; United States *v.* Joint Traffic Association, 171 U. S., 505; United States *v.* Addyston Pipe & Steel Co., 85 Fed. Rep., 271. Certainly such a difference in conditions ought not to justify a difference in rates before the commission or the court.

Chattanooga is 151 miles nearer than Nashville to New York by the southern and most direct routes. It has at least three through competing southern lines from New York under different managements. These lines reach Nashville over one road from Chattanooga. Chattanooga is connected with Cincinnati, where the stream of traffic of the East and West trunk lines is reached, by a railroad 335 miles in length. Nashville reaches the same city by a railroad 295 miles in length. So far as the record shows, the conditions of railroad transportation between Cincinnati and Nashville are not substantially different from those between Cincinnati and Chattanooga. Both the Louisville & Nashville and the Cincinnati Southern are southern roads. The Louisville & Nashville does not encounter as much unrestricted competition at Nashville as the Cincinnati Southern at Chattanooga, for the only other line entering Nashville is the Nashville & Chattanooga Company, of which the Louisville & Nashville Company owns more than one-half the stock. But it is said that the Louisville & Nashville Company is vitally interested in building up Nashville by enabling her merchants to compete with those of cities on the Ohio river. Why should the interest of this company be any greater in Nashville than that of the Cincinnati Southern railroad in Chattanooga? The difference in the Chattanooga and Nashville rates is to be found in something other than the physical conditions existing at the two cities, for, regarding them alone, there is no reasonable ground for any substantial disparity. The evidence shows that the rates to Chattanooga from Cincinnati and from the eastern seaboard have always been fixed and agreed upon by an association of the southern railway and steamship companies. The Louisville & Nashville Company has not been a member of it, but the Nashville, Chattanooga & St. Louis Company, of which the Louisville & Nashville Company owns a majority of the stock, has always been a member, and so has the Georgia Central Railroad & Banking Company, whose road from Atlanta to Savannah the Louisville & Nashville Company jointly operates. The association has grouped Chattanooga with a large number of towns to the south of it for the same rates, and all the members of the association make their rates to Chattanooga accordingly. The
502 Cincinnati, New Orleans & Texas Pacific railway has been a member of this association, and it is the agreement between it and the other lines at Chattanooga which has prevented the lowering of its New York rate. Without such an agreement it is not possible to see why normal competition would not give Chattanooga substantially the same rates as Nashville. The result

of the agreement is to deny to Chattanooga the natural advantage which direct connection with Cincinnati secures to Nashville and ought to secure to Chattanooga. The agreement is more than a mere tacit understanding resulting from a praiseworthy desire to avoid rate wars and the carriage of goods at less than cost; for the rates to Nashville are admitted to pay a profit over the cost of transportation, and they are from 25 per cent. to 50 per cent. less than the Chattanooga rate for a considerably longer haul with no apparent difference in conditions.

We do not perceive that the fact that the competition at Nashville existed before the defendants began to carry merchandise by the southern route has any material bearing on the issue. It only shows that the cost of transportation on the southern lines was more slowly reduced than on the northern lines; but it does not affect the existing situation.

It is not important to inquire into the motive actuating the Cincinnati, New Orleans & Texas Pacific Railway Company in its acquiescence in the Chattanooga rate agreement, though its greater or less dependence on the great southern railway systems for its north bound business readily suggests itself as a reason for its willingness to hold up its rates and to refuse to Chattanooga what normal competition would give her.

Nor can it be said that the Louisville & Nashville Company, whose fostering care of Nashville is insisted upon in the evidence and briefs for defendants, and is offered as a motive for its low rates to Nashville, is not a party to the plan by which Chattanooga is prevented from enjoying the natural traffic advantages which her railroads and her situation ought to give her. For through its ownership of a majority of the stock of the Nashville, Chattanooga & St. Louis Railway Company, operating a road from Nashville through Chattanooga to Atlanta, its joint operation of the railroad of the Georgia Central Railroad & Banking Company from Atlanta to Savannah in connection with the Ocean Steamship Company, of which the Georgia Central Company owns all the stock, it is very largely interested in traffic from the eastern seaboard to Chattanooga, and through Chattanooga to Nashville, and necessarily
503 exercises an influence in shaping the action of the Southern Traffic Association in fixing rates. By its consent to the discrimination against Chattanooga it only furthers its purpose to favor Nashville, for it enables Nashville merchants to undersell those of Chattanooga to the north and west of that city. We know that it is stipulated in the record that the officers of the Nashville, Chattanooga & St. Louis Railway Company would testify that it competes with the Louisville & Nashville Railroad Company, and that they are under different managements; but such evidence must be weighed in the light of the history of railroads in this country and the motives that ordinarily govern in railroad management. One railroad company acquires the controlling interest in another company to control its general policy; and while it may permit independence in the personnel and the details of management, it needs more than a stipulated statement of this general

nature to induce a belief that the company which elects the directors of the other will permit that other to take a course materially detrimental to the interests of the owning company.

We are pressed with the argument that to reduce the rates to Chattanooga will upset the whole southern schedule of rates and create the greatest confusion; that for a decade Chattanooga has been grouped with towns to the south and west of her, shown in the diagram, and that her rates have been the key to the southern situation. The length of time which an abuse has continued does not justify it. It was because time had not corrected abuses of discrimination that the interstate-commerce act was passed. The group in which Chattanooga is placed, shown by the diagram above, puts her on an equality in respect to eastern rates with towns and cities of much less size and business, and much farther removed from the region of trunk-line rates, and with much fewer natural competitive advantages. If taking Chattanooga out of this group and putting it with Nashville requires a readjustment of rates in the South, this is no ground for refusing to do justice to Chattanooga. The truth is that Chattanooga is too advantageously situated with respect to her railway connections to the north and east to be made the first city of importance to bear the heavier burden of southern rates, when Nashville, her natural competitor, is given northern rates. The line of division between northern and southern rates ought not to be drawn so as to put her to the south of it, if Nashville is to be put to the north of it. And we feel convinced from a close
504 examination of the evidence that but for the restriction of normal competition by the Southern Traffic Association her situation would win for her certainly the same rates as Nashville. It may be that the difficulty of readjusting rates on a new basis is what has delayed justice to Chattanooga. It may well be so formidable as to furnish a motive for maintaining an old abuse.

It has been suggested that traffic managers are much better able, by reason of their knowledge and experience, to fix rates, and to decide what discriminations are justified by the circumstances than courts. This cannot be conceded so far as it relates to the Interstate Commerce Commission, which by reason of the experience of its members in this kind of controversy, and their great opportunity for full information, is, in a sense, an expert tribunal; but it is true of the Federal court. Nevertheless, courts are continually called upon to review the work of experts in all branches of business and science, and the intention of Congress that they should revise the work of railway traffic experts, whether railway managers or commerce commissioners, is too clear to admit of dispute.

We conclude that the defendants are violating the fourth section of the interstate-commerce act in charging a higher rate from New York and other eastern cities to Chattanooga than to Nashville. The order that enjoined them from doing so is therefore right. The decree of the circuit court affirming the order of the commission is affirmed with costs.

505 United States Circuit Court of Appeals for the Sixth Circuit.

I, Frank O. Loveland, clerk of the United States circuit court of appeals for the sixth circuit, do hereby certify that the foregoing is a true and correct copy of the record and the original citation in the case of East Tennessee, Virginia & Georgia R'y Co. *et al.* vs. Interstate Commerce Commission, No. 595, October term, 1899, as the same remains upon the files and records of said United States circuit court of appeals for the sixth circuit, and of the whole thereof.

Seal United States Circuit Court of Appeals, Sixth Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the sixth circuit, at the city of Cincinnati, Ohio, this seventh day of December, 1899.

FRANK O. LOVELAND,
Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.

Endorsed on cover: File No., 17,595. U. S. C. C. of appeals, sixth circuit. Term No., 481. The East Tennessee, Virginia & Georgia Railway Company, The Norfolk & Western Railroad Company, *et al.*, appellants, *vs.* The Interstate Commerce Commission. Filed January 2nd, 1900.